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Federal employees, annuity increase
April 26, 1974; 88 Stat. 93)

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 A—GENERAL

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

Food Labeling for Certain Soft Drinks; Exemption When Trademark Serves as Statement of Identity; Effective Date Confirmation

An order was published in the FEDERAL REGISTER of January 30, 1974 (39 FR 3821), amending the food labeling regulations (21 CFR 1.1c(a)(5)) to exempt certain soft drinks from the requirements of 21 CFR 1.8(d) which requires that the statement of identity shall be in lines generally parallel to the base on which the package rests as it is designed to be displayed.

Pursuant to provisions of the Fair Packaging and Labeling Act (secs. 5(b), 6(a), 80 Stat. 1298, 1299–1300; 15 U.S.C. 1453, 1455) and the Federal Food, Drug, and Cosmetic Act (sec. 701, 52 Stat. 1055–1056, as amended; 21 U.S.C. 371) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 2.120), notice is given that no objections were filed to the subject order. Accordingly, the amendment promulgated by that order became effective April 1, 1974.

Dated: May 1, 1974.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.74–10555 Filed 5–7–74;8:45 am]

SUBCHAPTER B—FOOD AND FOOD PRODUCTS

PART 15—CEREAL FLOURS AND RELATED PRODUCTS

Order To Provide Optional Ingredient and To Require Label Declaration of All Optional Ingredients; Effective Date Confirmation and Extension

In the FEDERAL REGISTER of November 28, 1973 (38 FR 32787), the Commissioner of Food and Drugs issued an order amending the standards of identity for (a) flour, white flour, wheat flour, plain flour (21 CFR 15.1) and whole wheat flour, graham flour, entire wheat flour (21 CFR 15.80) to permit the optional addition of harmless preparations of α-amylase obtained from Aspergillus oryzae alone or in a suitable harmless carrier and (b) flour, white flour, wheat flour, plain flour (21 CFR 15.1), self-rising flour, self-rising white flour, self-rising wheat flour (21 CFR 15.50), whole wheat flour, graham flour, entire wheat flour (21 CFR 15.80), and enriched farina (21 CFR 15.140) to require label declaration of all optional ingredients.

The order provided that any person who would be adversely affected could at any time on or before December 28, 1973, file written objections to and also request a hearing on the order amending the regulation.

No objections to the order or requests for a hearing were filed; however, one letter was received from a flour milling company which pointed out that a labeling problem would be caused by the varying effective dates between this regulation and those pertaining to enriched flours and bread as well as those promulgated by certain other recent orders. The letter requested a uniform effective date of January 1, 1975.

By an order published in the FEDERAL REGISTER of February 11, 1974 (39 FR 5188), adjustments were made in the order of October 15, 1973 (38 FR 28558), which amended the standards for enriched flours and bread, to extend the date for full compliance from April 15, 1974, to January 1, 1975.

For the sake of uniformity and in response to the request, the requirement of the order of November 28, 1973, that all labeling ordered after April 15, 1974, be in compliance is being rescinded.

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), notice is given that no objections were filed to the order of November 28, 1973, and the effective date for full compliance with the regulations therein is extended to January 1, 1975.

Dated: May 1, 1974.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.74–10556 Filed 5–7–74;8:45 am]

PART 19—CHEESES, PROCESSED CHEESES, CHEESE FOODS, CHEESE SPREADS, AND RELATED FOODS

Cold-Pack Cheese Labeling; Confirmation of Effective Date of Order Providing for Alternate Name

An order was published in the FEDERAL REGISTER of February 1, 1974 (39 FR 4076), amending the standard of identity for cold-pack cheese (21 CFR 19.785) to delete the provision for the name "Comminuted _____ cheese" and to provide for the name "_____ cold-pack cheese" as an alternative to the other presently provided for names "Cold-pack _____ cheese" and "_____ club cheese," the blanks in each case being filled in with the name or names of cheese varieties used in the food, in order of predominance.

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 of Food and Drugs (21 CFR 2.120), notice is given that no objections were filed to the subject order. Accordingly, the amendments promulgated by that order became effective April 2, 1974.

Dated: May 1, 1974.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.74–10557 Filed 5–7–74;8:45 am]

SUBCHAPTER J—RADIOLOGICAL HEALTH

PART 1002—RECORDS AND REPORTS

PART 1010—PERFORMANCE STANDARDS FOR ELECTRONIC PRODUCTS: GENERAL

Product Identification and Initial Reports

On September 17, 1973, the Commissioner of Food and Drugs published a notice of proposed rulemaking in the FEDERAL REGISTER (38 FR 26007) to amend § 278.202 (21 CFR 278.202) of Subpart C and § 278.710 (21 CFR 278.710) of Subpart H in 21 CFR Part 278. Pursuant to recodification of Part 278 published in the FEDERAL REGISTER of October 15, 1973 (38 FR 28624), these sections were transferred to Subchapter J, and are now § 1010.3 (21 CFR 1010.3) of Part 1010 and § 1002.10 (21 CFR 1002.10) of Part 1002. The proposed amendment would have discontinued the requirement that a manufacturer submit to the Secretary of Health, Education, and Welfare, the key to the code for determining the date of manufacture of an electronic product and instead require that this information be placed on the product identification tag or label affixed to the product. Interested persons were given 60 days in which to file written comments regarding the proposal.

This proposal was based, in part, upon requests to the Food and Drug Administration from members of the public for the key coded information on product labels. It was determined that the key to this coded information on labels of electronic products subject to performance

standards does not constitute information exempt from mandatory disclosure upon request under the Freedom of Information Act (5 U.S.C. 552(b)(4)).

On March 27, 1972, one hundred and forty-two (142) manufacturers of electronic products and industry associations, both domestic and foreign, were advised by letter of the intent to release to the public, upon request, coded information concerning the date of manufacture. All were given an opportunity to justify why such information should not be released. Twenty-six (26) manufacturers responded and 13 did not object to the disclosures. The 13 that objected stated that products are often manufactured far in advance of sale causing people to refrain from buying such merchandise if they are able to determine the date of manufacture.

It was the opinion of the Food and Drug Administration at the time this proposal was published in the FEDERAL REGISTER of September 17, 1973, that manufacturers objecting to the disclosure of information concerning the date of manufacture had not adequately substantiated their claims that such disclosure would have an adverse impact on sales.

Furthermore, permitting manufacturers to independently code the date of manufacture on labels, while at the same time allowing disclosure of this information to the public, seems an unnecessary burden upon those concerned. Also, there is a definite need for the Food and Drug Administration representative, who is field-testing an electronic product subject to a standard, to know the date of manufacture in order to ascertain the applicable provisions of a performance standard for that unit. Applicable provisions change as amendments to standards are promulgated.

Twelve responses were received on the proposal. Only one, from a state health department, voiced support. It stated that it would be easier to determine the applicable provisions of a performance standard when a product is field tested. The regulation, as revised herein, will not alter this feature.

Eleven responses in opposition to the proposal were received from electronic product manufacturers and trade associations. Four major issues were expressed in these responses. The issues and the Commissioner's conclusions are summarized as follows:

1. One comment contended that information concerning the keys to the code of the date of manufacture is exempt from disclosure under the Freedom of Information Act.

The Commissioner concludes that there is no reason to alter the interpretation that such information must be made available for public disclosure.

2. Eleven of the manufacturers stated that a given model of an electronic product is occasionally manufactured up to several years prior to sale to a consumer in order to eliminate frequent retooling; however, if the date of manufacture is clearly labeled on the product, the consumer is likely to regard the date as the date upon which the useful life of that product terminates, as in the case of photographic film. As electronic products subject to regulations issued under the Radiation Control for Health and Safety Act do not deteriorate appreciably when not in use, manufacturers urged that they be allowed to continue to code the date of manufacture. Seven letters stated that a clear identification of the date of manufacture could threaten the industry with incalculable financial loss without providing added protection of public health and safety. In support of this position, one manufacturing group presented the testimony of their public relations and marketing experts.

The Commissioner has concluded that coding the date of manufacture is not acceptable for the reasons previously cited, and because the date of manufacture is necessary to interested persons, including consumers, to determine the applicable provisions of a radiation safety performance standard to that product.

3. One comment stated that identification placed on the product to show the serial and model numbers is controlled by a computer to assure traceability in recordkeeping, and that it is difficult to sequentially date-code serial plates and retain necessary flexibility of scheduling. In response to the comment, it is noted that neither the current requirements nor the proposed amendments require that the month, year, and place of manufacture be placed on the label bearing the serial and model numbers, nor is it required that the date of manufacture be part of the serial number.

4. Two comments suggested that all manufacturers identify the month and year of manufacture by using a uniform and standard code such as the coding system of the Electronic Industries Association. Also, it was noted that the proposal did not clearly define what constitutes a code, and that writing out the total date is not conducive to computerized billing systems and data storage. It was suggested that the Food and Drug Administration consider a four-digit system to identify the date of manufacture.

As previously discussed, the Commissioner concludes that the manufacturer of electronic products subject to the standards issued under the Radiation Control for Health and Safety Act shall provide the month and year of manufacture in a form which is legible, and clearly presented without benefit of a code. This date, as set forth on the label by the manufacturer, in conjunction with the certification label provided as required by § 1010.4, would permit a determination of the radiation safety performance requirements issued under the act which are effective and applicable to the product.

Pursuant to § 6.1(b) (21 CFR 6.1(b)) of these regulations, the possible environmental consequences of this regulatory amendment have been carefully considered, and it has been determined that the action will have neither a marginal nor a significant impact upon the environment. Based upon this determination, it has been concluded that an environmental impact statement pursuant to sec. 102(2)(c) of the National Environmental Policy Act is not required. A copy of the environmental analysis report, as well as pertinent background data supporting the Commissioner's conclusions with respect to this order are available for public review in the office of the Hearing Clerk, Rm. 6–86, 5600 Fishers Lane, Rockville, MD 20852.

It has been determined that amendment to § 278.710 and § 278.202 (now § 1002.10 and § 1010.3) is necessary and therefore, pursuant to the Public Health Service Act, as amended by the Radiation Control for Health and Safety Act of 1968 (secs. 358 and 360A, 82 Stat. 1177–1179 and 1182–1184; 42 U.S.C. 263f, 2631) and under authority delegated to him (21 CFR 2.120), the Commissioner amends Parts 1002 and 1010 of Subchapter J as follows:

1. In part 1002, paragraph (b) of § 1002.10 is revised to read as follows:

§ 1002.10 Initial reports.

* * * * *

(b) Identify each model of the listed product together with sufficient information concerning the manufacturer's code or other system of labeling sufficient to enable the Secretary to determine the place of manufacture.

* * * * *

2. In Part 1010, paragraph (a)(2) of §1010.3 is revised to read as follows:

§ 1010.3 Identification.

(a) * * *

(2) The place and month and year of manufacture: (i) The place of manufacture may be expressed in code provided the manufacturer has previously supplied the Secretary with the key to such code. (ii) The month and year of manufacture shall be provided clearly and legibly, without abbreviation, and with the year shown as a four-digit number as follows:

Manufactured: [*Insert month and year of manufacture.*]

* * * * *

Effective date. This order shall become effective January 1, 1975.

(Secs. 358 and 360A, 82 Stat. 1177–1179 and 1182–1184 (42 U.S.C. 263f, 2631.))

Dated: May 2, 1974.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.74–10558 Filed 5–7–74;8:45 am]

Title 5—Administrative Personnel

CHAPTER I—CIVIL SERVICE COMMISSION

PART 213—EXCEPTED SERVICE

Treasury Department

Section 213.3305 is amended to reflect the transfer of the functions of the Office of the Treasurer of the United States to

the Office of the Secretary and placement of the affected Schedule C position under paragraph (a).

Effective May 8, 1974, subparagraph (53) is added to paragraph (a) of § 213.3305 as set out below, and paragraph (e) is revoked.

§ 213.3305 Treasury Department.

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

(53) One Confidential Administrative Assistant to the Treasurer of the United States.

* * * * *

(e) [Revoked]

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

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

[FR Doc.74–10531 Filed 5–7–74;8:45 am]

PART 213—EXCEPTED SERVICE

Department of Defense

Section 213.3306 is amended to reflect the following title change from: one Special Assistant for All-Volunteer Force Actions to the Assistant Secretary of Defense (Manpower and Reserve Affairs) to one Special Assistant for Accession Policy to the Assistant Secretary of Defense (Manpower and Reserve Affairs).

Effective May 8, 1974, § 213.3306(a) (53) is amended as set out below.

§ 213.3306 Department of Defense.

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

(53) One Special Assistant for Accession Policy to the Assistant Secretary of Defense (Manpower and Reserve Affairs).

* * * * *

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

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

[FR Doc.74–10527 Filed 5–7–74;8:45 am]

PART 213—EXCEPTED SERVICE

Department of Defense; Correction

In the FEDERAL REGISTER of March 6, 1974 (FR Doc. 74–5137) on page 8607, subparagraphs (53), (54) and (55) were added to § 213.3306(a). The correct designations for these subparagraphs are (58), (59) and (60).

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

[FR Doc.74–10528 Filed 5–7–74;8:45 am]

PART 213—EXCEPTED SERVICE

Department of Agriculture

Section 213.3313 is amended to show that one position of Confidential Assistant to the Assistant Secretary for International Affairs and Commodity Programs is excepted under Schedule C.

Effective May 8, 1974, § 213.3313(a) (12) is added as set out below.

§ 213.3313 Department of Agriculture.

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

(12) One Confidential Assistant to the Assistant Secretary for International Affairs and Commodity Programs.

* * * * *

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

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

[FR Doc.74–10526 Filed 5–7–74;8:45 am]

PART 213—EXCEPTED SERVICE

Department of Labor

Section 213.3315 is amended to reflect the following title change from: One Special Assistant to the Counselor to the Secretary to One Executive Assistant to the Counselor to the Secretary.

Effective May 8, 1974, § 213.3315(a) (32) is amended as set out below.

§ 213.3315 Department of Labor.

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

(32) One Executive Assistant to the Counselor to the Secretary.

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

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

[FR Doc.74–10530 Filed 5–7–74;8:45 am]

PART 213—EXCEPTED SERVICE

General Services Administration

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

Effective May 8, 1974, § 213.3337(a) (6) is amended and § 213.3337(a)(17) is added as set out below.

§ 213.3337 General Services Administration.

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

(6) Eight Confidential Assistants to the Administrator.

* * * * *

(17) One Special Assistant to the Administrator.

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

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

[FR Doc.74–10529 Filed 5–7–74;8:45 am]

PART 213—EXCEPTED SERVICE

ACTION

Section 213.3359 is amended to show that one position of Special Assistant to the Associate Director for Policy and Program Development, Office of the Associate Director for Policy and Program Development, is excepted under Schedule C.

Effective May 8, 1974, § 213.3359(o) is added as set out below.

§ 213.3359 ACTION.

* * * * *

(o) Special Assistant to the Associate Director for Policy and Program Development, Office of Policy and Program Development.

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

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

[FR Doc.74–10525 Filed 5–7–74;8:45 am]

Title 12—Banks and Banking

CHAPTER III—FEDERAL DEPOSIT INSURANCE CORPORATION

SUBCHAPTER A—PROCEDURE AND RULES OF PRACTICE

PART 303—APPLICATIONS, REQUESTS, AND SUBMITTALS

Delegation of Authority To Act on Certain Applications

1. Section 303.11 of the rules and regulations of the Federal Deposit Insurance Corporation (12 CFR 303.11) provides for the delegation of authority from the Corporation's Board of Directors (hereinafter the "Board") to the Director of the Corporation's Division of Bank Supervision and, where confirmed in writing by the Director of the Division of Bank Supervision, to the Corporation's Regional Directors, to act on certain applications and requests from insured State nonmember banks. Section 303.12 of the rules and regulations of the Federal Deposit Insurance Corporation places certain limitations on such delegated authority by precluding delegation where (1) a condition other than one agreed to in writing by the bank, or other than a time limitation, is to be prescribed in approving an application, (2) all necessary final approvals have not been obtained from the appropriate State authority, or (3) in the case of branch applications, certain requisites have not been met prior to approval (12 CFR 303.12 (a) and (c)).

The Board has decided to amend § 303.11 so as to provide for additional delegated authority in certain instances. Under the amendments, the Director of the Division of Bank Supervision is delegated the authority to approve but not to deny:

(1) Applications by State member banks to retain their status as insured banks upon withdrawal from membership in the Federal Reserve System;

(2) applications for approval of "phantom" bank mergers; and

(3) applications for deposit insurance filed by new banks which are formed in connection with "phantom" bank mergers.

It is the understanding of the Board that authority to approve applications by State member banks under (1) above will be delegated to the Regional Directors by written confirmation on the part of the Director of the Division of Bank Supervision so that they can be handled, wherever possible, at the Regional Office level.

Approval of the above applications is usually a routine matter and is thus a proper subject for delegation to the Director of the Division of Bank Supervision. The amendments serve the dual objectives of reducing demands on the Board's time and of promoting and maintaining processing efficiency.

The Board has also decided to amend § 303.12(c) so as to give the Director of the Division of Bank Supervision more flexibility in applying certain of the requisites which must be satisfied before an application to establish and operate a new branch can be approved. The amendments substitute a "reasonableness" test for minimum percentage requirements with respect to:

(1) A commercial bank applicant's adjusted capital and reserves, including written commitments for additional capital funds, and

(2) an applicant's aggregate fixed asset investment, including its investment in the proposed branch.

In the case of adjusted capital and reserves of commercial banks, the Board has not amended the present requirement for branch applications which are approved at the Regional Office level. Consequently, the Regional Directors are delegated authority to approve the establishment and operation of new commercial bank branches only where the following requisite, among others, has been satisfied: The applicant's adjusted capital and reserves, including written commitments for additional capital funds, constitute at least 7.5 percent of its adjusted gross assets. However, the amendments do authorize the Director of the Division of Bank Supervision to approve the application of commercial banks with adjusted capital and reserves, including written commitments for additional capital funds, below 7.5 percent of adjusted gross assets where he is satisfied as to the capital adequacy of the applicant when viewed in light of all the circumstances which bear on such determination.

In addition, with respect to an applicant's fixed asset investment, including its investment in the proposed branch, the amendments make it clear that both direct and indirect investments will be considered in determining whether such investments are "reasonable" in relation to the applicant's earnings capacity and other pertinent bases of consideration.

Finally, the Board has decided to amend § 303.13 of the rules and regulations of the Federal Deposit Insurance Corporation which provides for other delegations of authority. The amendment delegates authority to the Director of the Division of Bank Supervision and, where confirmed in writing by the Director, to the Regional Directors, to furnish reports to the Board of Governors of the Federal Reserve System and the Comptroller of the Currency on the competitive factors involved in "phantom" bank mergers required to be approved by one or the other of those agencies.

2. Section 303.11 is amended by adding to paragraph (a) three new subparagraphs (8), (9), and (10) to read as follows:

§ 303.11 Delegation of authority to act on certain applications.

* * * * *

(a) * * *

(8) Applications for deposit insurance filed by State and members banks upon withdrawal from membership in the Federal Reserve System; *Provided, however,* That this authority shall extend to the approval but not to the denial of such applications.

(9) Applications for "phantom" bank mergers; [2a] *Provided, however,* That this authority shall extend to the approval but not to the denial of such applications.

(10) Applications for deposit insurance filed by proposed State nonmember banks which are formed in connection with a "phantom" bank merger; *Provided, however,* That this authority shall extend to the approval but not to the denial of such applications.

3. Section 303.12 is amended by revising subparagraphs (5) and (6) of paragraph (c) and adding thereto a new subparagraph (5)(a) to read as follows:

§ 303.12 Applications where authority to act is not delegated.

* * * * *

(c) * * *

(5) In the case of a mutual or guaranty savings bank, the applicant's adjusted [7] capital and reserves, including written commitments for additional capital funds, constitute at least 6 percent of its adjusted [7] gross assets.

(5a) In the case of a commercial bank, the applicant's adjusted [7] capital and reserves, including written commitments for additional capital funds, are determined to be adequate relative to its adjusted [7] gross assets; *Provided, however,* That the authority to make such a determination is not delegated to any Regional Director where the applicant's adjusted [7] capital and reserves, including written commitments for additional capital funds, constitute less than 7.5 percent of its adjusted [7] gross assets.

(6) The applicant's aggregate direct and indirect fixed asset investment, including its direct and indirect investment in the proposed branch,[8] is determined to be reasonable relative to its earnings capacity and other pertinent bases of consideration.

4. Section 303.13 is amended by adding a new paragraph (f) to read as follows:

§ 303.13 Other delegations of authority.

* * * * *

(f) *Competitive factor reports on "phantom" bank mergers.* The Board of Directors has delegated to the Director of the Division of Bank Supervision, or, where confirmed in writing by the Director of the Division of Bank Supervision, to the Regional Director of the Region in which the applicant bank [11a] is located, the authority on behalf of the Board of Directors to furnish reports to the Board of Governors of the Federal Reserve System or the Comptroller of the Currency on the competitive factors involved in any "phantom" bank merger [11b] required to be approved by one or the other of those agencies.

(Sec. 5, 8(c), 9, 18(c); 64 Stat. 876, 879–80, 881–82, 80 Stat. 7–9; 12 U.S.C. 1815, 1818(c), 1819, 1828(c))

5. The rulemaking procedures set forth in the Administrative Procedure Act (5 U.S.C. §§ 553(b) and (d)) and the rules and regulations of the Federal Deposit Insurance Corporation (12 CFR 302.1, 302.2, 302.5) with respect to notice, public participation, and deferred effective date were not followed in connection with these amendments because they constitute rules of internal corporation practice and procedure and are not substantive in nature.

6. *Effective date.* These amendments shall become effective May 8, 1974.

By order of the Board of Directors, May 2, 1974.

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

[FR Doc.74-10567 Filed 5-7-74;8:45 am]

Title 33—Navigation and Navigable Waters

CHAPTER I—COAST GUARD, DEPARTMENT OF TRANSPORTATION

[CGD 73-241 P]

PART 82—BOUNDARY LINES OF INLAND WATERS

Strait of Juan de Fuca, Haro Strait, and Strait of Georgia; Correction

In FR Doc. 74-7975 appearing at pages 12767-68 in the issue for Monday, April 8, 1974, the comment deadline for public comments should read, "All comments received on or before May 26, 1974, will be fully considered before final action is taken on this proposal."

[2a] As used in paragraph (a) (9) and (10) of this section, the term " 'phantom' bank merger" applies to any merger or other transaction in the nature of a corporate reorganization which, in and of itself, would have no effect on competition.

[7] Based on classifications made at the last examination of the applicant.

[8] On a consolidated basis.

[11a] As used in this paragraph (f), the term "applicant bank" means the bank which is applying for merger approval either to the Board of Governors of the Federal Reserve System or to the Comptroller of the Currency.

[11b] The term " 'phantom' bank merger" is defined in footnote 2a of this Part 303.

Dated: May 3, 1974.

R. I. PRICE,
Captain, U.S. Coast Guard, Acting Chief, Office of Marine Environment and Systems.

[FR Doc.74-10603 Filed 5-7-74;8:45 am]

[CGD 73-12R]

PART 117—DRAWBRIDGE OPERATION REGULATIONS

Root River, Wis., Correction

The following correction is made to the amendment regarding the operation of the State Street bridge in Racine, Wisconsin, published in the FEDERAL REGISTER on April 22, 1974 at 39 FR 14201:

1. On line 6 of § 117.660(a)(2) the time is corrected to read, "12 noon to 12:15 p.m."

Effective date. This correction is effective May 8, 1974.

Dated: May 3, 1974.

W. M. BENKERT,
Chief, Office of Marine Environment and Systems.

[FD Doc.74-10604 Filed 5-7-74;8:45 am]

Title 50—Wildlife and Fisheries

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

PART 33—SPORT FISHING

Bowdoin National Wildlife Refuge

The following special regulation is issued and is effective May 8, 1974.

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

MONTANA

BOWDOIN NATIONAL WILDLIFE REFUGE

Sport fishing by rod, reel and pole, bow and arrow and the capturing of bait fish (minnows) by seine and minnow trap on Bowdoin National Wildlife Refuge, Phillips County, Montana is permitted on a year-around basis, but only on areas designated by signs as open to fishing. These open areas are delineated on maps available at refuge headquarters, 7 miles east of Malta, Montana and from the Regional Director, Bureau of Sport Fisheries and Wildlife, P.O. Box 25486, Denver, Colorado 80225. Sport fishing shall be in accordance with all applicable State regulations.

The provisions of this special regulation supplement the regulations which govern fishing on wildlife refuge areas generally which are set forth in 50 CFR Part 33 and are effective through September 30, 1974.

JOHN R. FOSTER,
Refuge Manager, Bowdoin National Wildlife Refuge.

MAY 1, 1974.

[FR Doc.74-10515 Filed 5-7-74;8:45 am]

PART 33—SPORT FISHING

UL Bend National Wildlife Refuge

The following special regulation is issued and is effective May 8, 1974.

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

MONTANA

UL BEND NATIONAL WILDLIFE REFUGE

Sport fishing with hook and line and bow and arrow on UL Bend National Wildlife Refuge, Phillips County, Montana is permitted on a year-around basis on the entire refuge. Maps are available from refuge headquarters, 7 miles east of Malta, Montana and from the Regional Director, Bureau of Sport Fisheries and Wildlife, P.O. Box 25486, Denver, Colorado 80225. Sport fishing shall be in accordance with all applicable State regulations.

The provisions of this special regulation supplement the regulations which govern fishing on wildlife refuge areas generally which are set forth in 50 CFR Part 33 and are effective through September 30, 1974.

JOHN R. FOSTER,
Refuge Manager, UL Bend National Wildlife Refuge.

MAY 1, 1974.

[FR Doc.74-10514 Filed 5-7-74;8:45 am]

Title 7—Agriculture

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

[Grapefruit Reg. 74, Amdt. 6]

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

Amendment of Size Regulation

This amendment lowers to $3\frac{5}{16}$ inches the minimum diameter requirement applicable to the handling of pink seedless grapefruit grown in the production area in Florida. The specification of such lower minimum size for Florida pink seedless grapefruit is necessary to satisfy the current and prospective demand for such grapefruit. The amended regulation recognizes the size distribution of much of the pink seedless grapefruit remaining for fresh shipment.

Findings. (1) Pursuant to the marketing agreement, as amended, and Order No. 905, as amended (7 CFR Part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, 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 of the committees established under the aforesaid amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of shipments of grapefruit, as hereinafter provided, will tend to effectuate the declared policy of the act.

2. The lower minimum diameter requirement for fresh shipments of pink seedless grapefruit is consistent with the available supply of and current and prospective demand for such smaller sizes of grapefruit by fresh market outlets.

(3) It is hereby further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice, engage in public rulemaking procedure, and postpone the effective date of this amendment until 30 days after publication thereof in the FEDERAL REGISTER (5 U.S.C. 553) in that 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 restrictions on the handling of pink seedless grapefruit grown in Florida.

Order. In § 905.551 (Grapefruit Regulation 74, 38 FR 25665, 28063, 31414, 34454, 34986; 39 FR 6605) the provisions of paragraph (b)(4) are amended to read as follows:

§ 905.551 Grapefruit Regulation 74.

* * * * *

(b) * * *

(4) Any seedless grapefruit, other than pink seedless grapefruit, grown in the production area, which are smaller than $3\frac{9}{16}$ inches in diameter, or any pink seedless grapefruit which are smaller than $3\frac{5}{16}$ inches in diameter, except that a tolerance for undersize grapefruit shall be permitted as specified in § 51.761 of the United States Standards for Florida Grapefruit.

* * * * *

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

Dated: May 2, 1974, to become effective May 6, 1974.

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

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

[Docket Nos. AO-360-A6 etc.]

MILK IN MINNESOTA-NORTH DAKOTA AND CERTAIN OTHER MARKETING AREAS

Order Amending Orders

Findings and determinations. The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of each of the aforesaid orders and of the previously issued amendments thereto; and all of the said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

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

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the respective marketing area.

Upon the basis of the evidencce 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 feed, 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 this order amending each of the specified orders, except North Central Iowa, 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 North Central Iowa 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.

The order set forth herein for the Des Moines, Iowa, marketing area incorporates amendments issued April 26, 1974 for this order that resulted from a separate proceeding.

PART 1060—MILK IN MINNESOTA-NORTH DAKOTA MARKETING AREA

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

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1060.85 Assessment for order administration.
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AUTHORITY. Secs. 1-19, 48 Stat. 31, as amended; (7 U.S.C. 601-674).

Subpart—Order Regulating Handling

GENERAL PROVISIONS

§ 1060.1 General provisions.

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

DEFINITIONS

§ 1060.2 Minnesota-North Dakota marketing area.

"Minnesota-North Dakota marketing area" (hereinafter referred to as the "marketing area") means all the territory within the boundaries of the counties listed below, including territory wholly or partly within such boundaries occupied by Government (municipal, State, or Federal) reservations, installations, institutions or other similar establishments:

MINNESOTA

Becker.	Marshall.
Beltrami.	Norman.
Big Stone.	Otter Tail.
Clay.	Pennington.
Clearwater.	Polk.
Douglas.	Red Lake.
Grant.	Roseau.
Hubbard.	Stevens.
Kittson.	Traverse.
Lake of the Woods.	Wadena.
Mahnomen.	Wilkin.

NORTH DAKOTA

Barnes.	Pembina.
Cass.	Ramsey.
Cavalier.	Ransom.
Dickey.	Richland.
Grand Forks.	Sargent.
Griggs.	Steele.
La Moure.	Traill.
Nelson.	Walsh.

SOUTH DAKOTA

Grant. Roberts.
Marshall.

§ 1060.3 Route disposition.

"Route disposition" means a delivery to a wholesale or retail outlet either directly or through a distributing facility such as a distribution point, a plant store, or a vendor of any fluid milk product classified as Class I milk, other than a delivery to a pool plant or a nonpool plant.

§ 1060.4 Plant.

"Plant" means the land, buildings, facilities, and equipment constituting a single operating unit or establishment at which milk or milk products (including filled milk) are received, processed, and/or packaged. Separate facilities used only as a reload point for transferring bulk milk or filled milk from one tank truck to another shall not be a plant under this definition. Facilities used only as a distribution point for storing fluid milk products in transit on routes shall not be a plant under this definition.

§ 1060.5 Distributing plant.

"Distributing plant" means a plant that is approved by an appropriate health authority for the processing or packaging of Grade A milk and from which there is route disposition during the month.

§ 1060.6 Supply plant.

"Supply plant" means a plant from which a fluid milk product that is acceptable to the appropriate health authority for distribution in the marketing area as Grade A is moved during the month to a distributing plant.

§ 1060.7 Pool plant.

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

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

(1) As route disposition, except filled milk, in the marketing area not less than 15 percent of Grade A milk receipts at such plant; and

(2) As route disposition, except filled milk, or by transfer to another plant and classified as Class I pursuant to § 1060.42, not less than the applicable percentage of such plant's receipts of Grade A milk:

(i) March through June, 20 percent;

(ii) July through February, 25 percent: *Provided,* That all distributing plants operated by a handler may be considered as one plant for the purpose of meeting the applicable percentage requirement of this subparagraph if the handler submits a written request to the market administrator prior to the delivery period for which such consideration is requested.

(b) A supply plant from which not less than 25 percent of its producer receipts at such plant during the month is shipped as fluid milk products, except filled milk, to pool plants qualified pursuant to paragraph (a) of this section: *Provided,* That a supply plant which qualified pursuant to this paragraph in each of the immediately preceding months of August through November shall be a pool plant for the months of March through June unless the plant operator requests the market administrator in writing that such plant not be a pool plant, such nonpool status to be effective the first month following such notice and thereafter until the plant qualifies as a pool plant on the basis of shipments.

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

(1) A distributing plant from which the Secretary determines a greater portion of the route disposition, except filled milk, is made in another marketing area regulated by another order issued pursuant to the Act and such plant is fully subject to regulation of such other order: *Provided,* That a distributing plant which was a pool plant under this order in the immediately preceding month shall continue to be subject to all of the provisions of this part until the third consecutive month in which a greater proportion of its route disposition, except filled milk, is made in such other marketing area unless, notwithstanding the provisions of this subparagraph, it is regulated by such other order;

(2) A distributing plant which meets the requirements set forth in paragraph (a) of this section which also meets the requirements of another marketing order on the basis of its route disposition in such other marketing area and from which the Secretary determines a greater quantity of route disposition, except filled milk, is made during the month in this marketing area than in such other marketing area but which plant is nevertheless fully regulated under such other marketing order;

(3) A supply plant from which the Secretary determines a greater proportion of its Grade A receipts, except filled milk, is shipped during the month to plants which are regulated by another plants pursuant to the Act if such shipments qualify it as a pool plant under such other order;

(4) A producer-handler plant;

(5) A governmentally owned and operated institution which disposes of Class I milk solely for use on its own premises or to its own facilities. Such an institution shall be exempt from all the provisions of this part; or

(6) That portion of a plant that is physically separated from the Grade A portion of such plant, is operated separately and is not approved by any health authority for the receiving, processing or packaging of any fluid milk product for Grade A disposition.

§ 1060.8 Nonpool plant.

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

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

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

(c) "Partially regulated distributing plant" means a nonpool plant that is not an other order plant, a producer-handler plant, or a governmentally owned and operated institution described in § 1060.7 (c)(5), from which there is route disposition in consumer-type packages or dispenser units in the marketing area during the month.

(d) "Unregulated supply plant" means a nonpool plant from which fluid milk products are shipped during the month to a distributing plant, and is not an other order plant, a producer-handler plant, or a governmentally owned and operated institution described in § 1060.7 (c)(5).

§ 1060.9 Handler.

"Handler" means:

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

(b) Any cooperative association with respect to producer milk which it causes to be diverted for its account pursuant to § 1060.13;

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

(d) Any person who operates a partially regulated distributing plant. This definition shall not apply to a governmentally owned and operated institution as described in § 1060.7(c)(5);

(e) A producer-handler; and

(f) Any person who operates an other order plant as described in § 1060.7(c)(1), (2), or (3).

§ 1060.10 Producer-handler.

"Producer-handler" means any person who meets all of the following conditions:

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

(b) Receives no milk during the month from other dairy farmers or fluid milk products from sources other than pool plants and not more than 3,000 pounds of milk and fluid milk products (including the milk equivalent of milk products other than fluid milk products which are reconstituted into fluid milk products) during the month from any source;

(c) Receives no milk products other than fluid milk products from any source for reconstitution into fluid milk products except that received within the limitations set forth in paragraph (b) of this section; and

(d) Such person must provide proof satisfactory to the market administrator that (1) the care and management of all the dairy animals and other resources necessary to produce the milk are the personal enterprise of and at the personal risk of such person, and (2) the operation of the processing and distributing

business is the personal enterprise of and at the personal risk of such person.

§ 1060.11 [Reserved]

§ 1060.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk in compliance with the Grade A inspection requirements of a duly constituted health authority, which milk is (1) received at a pool plant, or (2) diverted as producer milk pursuant to § 1060.13.

(b) "Producer" shall not include:

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

(2) Any person with respect to milk produced by him which is diverted to a pool plant from an other order plant if the other order designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to § 1060.44(a)(8)(iii) and the corresponding step of § 1060.44(b); and

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

§ 1060.13 Producer milk.

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

(a) Received during the month at a pool plant directly from such producer or a handler described in § 1060.9(c);

(b) Received by a handler described in § 1060.9(c) from producers in excess of the quantity delivered to pool plants; or

(c) Diverted from a pool plant to a nonpool plant that is not a producer-handler plant or the plant of a governmentally owned and operated institution by the operator of a pool plant or a handler described in § 1060.9(b), if such movement is specifically reported and the conditions of paragraphs (c)(1), (2), and (3) of this section have been met. Such milk shall be deemed to have been received by the diverting handler at the location of the nonpool plant to which diverted in applying §§ 1060.52 and 1060.75:

(1) During March through June a cooperative association handler pursuant to § 1060.9(b) may divert for its account without limit the milk of any member producer. During the months of July through February such handler may divert an aggregate quantity not exceeding 50 percent of the milk of all such producers whose milk has been received at a pool plant(s) for at least 3 days during the month.

(2) During March through June a handler in his capacity as the operator of a pool plant may divert for his account without limit the milk of any producer, other than a member of a cooperative association which has diverted milk pursuant to paragraph (c)(1) of this section. During the months of July through February such handler may divert an aggregate quantity not exceeding 50 percent of the milk of all such producers whose milk has been received at his pool plant(s) for at least 3 days during the month.

(3) In the event milk receipts from dairy farmers are diverted in excess of the applicable percentages pursuant to paragraphs (c)(1) and (2) of this section, the diverting handler shall specify the dairy farmers whose milk was overdiverted. Only the milk of such dairy farmer(s) which is received at a pool plant during the month shall be producer milk for such month.

§ 1060.14 Other source milk.

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

(a) Receipts of fluid milk products and bulk products, specified in § 1060.40(b)(1) from any source other than producers, handlers described in § 1060.9(c), or pool plants;

(b) Receipts in packaged form from other plants of products specified in § 1060.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1060.40(b)(1), and products produced at the plant during the same month) from any source which are reprocessed, converted into, or combined with another product in the plant during the month; and

(d) Receipts of any milk product (other than a fluid milk product or a product specified in § 1060.40(b)(1)) for which the handler fails to establish a disposition.

§ 1060.15 Fluid milk product.

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

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

(2) Any milk product not specified in paragraph (a)(1) of this section or in § 1060.40 (b) or (c)(1) (i) through (v) if it contains by weight at least 80 percent water and 6.5 percent nonfat milk solids and less than 9 percent butterfat and 20 percent total solids.

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

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

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

§ 1060.16 Fluid cream product.

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

§ 1060.17 Filled milk.

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

§ 1060.18 Cooperative association.

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

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

(b) Has full authority in the sale of milk of its members and is engaged in making collective sales of or marketing milk or its products for its members; and

(c) Has its entire activities under the control of its members.

HANDLER REPORTS

§ 1060.30 Reports of receipts and utilization.

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

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

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

(2) Receipts of milk from handlers described in § 1060.9(c);

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

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1060.40(b)(1); and

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

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

of producer milk. Such report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1060.9 (b) and (c) shall report:

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

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

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

§ 1060.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1060.9 (a), (b), and (c), shall report to the market administrator his producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer:

(1) His name and address;

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

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

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

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1060.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1060.32 Other reports.

In addition to the reports required pursuant to §§ 1060.30 and 1060.31, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligation under the order.

CLASSIFICATION OF MILK

§ 1060.40 Classes of utilization.

Except as provided in § 1060.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1060.30 shall be classified as follows:

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

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

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

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

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

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

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

(4) Used to produce:

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

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

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

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

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

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

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

(1) Used to produce:

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

(ii) Butter;

(iii) Any milk product in dry form;

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

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

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

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

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

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

(5) In skim milk in any modified fluid milk product that is in excess of the quantity of skim milk in such product that was included within the fluid milk product definition pursuant to § 1060.15; and

(6) In shrinkage assigned pursuant to § 1060.41(a) to the receipts specified in § 1060.41(a)(2) and in shrinkage specified in §1060.41 (b) and (c).

§ 1060.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1060.30, the market administrator shall determine the following:

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

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

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

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

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant and milk received from a handler described in § 1060.9(c));

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1060.9(c), except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be 2 percent;

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

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

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

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

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

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1060.9 (b) or (c), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

§ 1060.42 Classification of transfers and diversions.

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

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant after the computations pursuant to § 1060.44(a)(12) and the corresponding step of § 1060.44(b);

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to 1060.44(a)(7) or the corresponding step of § 1060.44(b), the skim milk or butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor-handler received during the month other source milk to be allocated pursuant to § 1060.44(a)(11) or (12) or the corresponding steps of § 1060.44(b), the skim milk or butterfat so transferred up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant.

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

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

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

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

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

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

(6) If the form in which any fluid milk product that is transferred to an other order plant is not defined as a fluid milk product under such other order, classification under this paragraph shall be in accordance with the provisions of § 1060.40.

(c) *Transfers to producer-handlers and to exempt government institutions.* Skim milk or butterfat transferred in the following forms from a pool plant to a producer-handler under this or any other Federal order or an exempt government institution defined in § 1060.7(c)(5) shall be classified:

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

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

(d) *Transfers and diversions to other nonpool plants.* Skim milk or butterfat transferred or diverted in the following forms from a pool plant to a nonpool plant that is not an other order plant, an exempt government institution defined in § 1060.7(c)(5), or a producer-handler plant shall be classified:

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

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

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

(*a*) The transferor-handler or divertor-handler claims such classification in his report of receipts and utilization filed pursuant to § 1060.30 for the month within which such transaction occurred; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

among such plants, to the extent possible first to any remaining Class I utilization, then to Class III utilization, and then to Class II utilization at such nonpool plant;

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

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

§ 1060.43 General classification rules.

In determining the classification of producer milk pursuant to § 1060.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1060.30 and shall compute separately for each pool plant and for each cooperative association with respect to milk for which it is the handler pursuant to § 1060.9 (b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1060.40, 1060.41, and 1060.42;

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

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1060.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1060.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1060.9(a) for each of his pool plants separately and of each handler described in § 1060.9 (b) and (c) by allocating the handler's receipts of skim milk and butterfat to his utilization as follows:

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

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1060.41(b);

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

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

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

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

(4) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 1060.40(b)(1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(5) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1060.40(b)(1) that were in inventory at the beginning of the month in packaged form, but not in excess of the pounds of skim milk remaining in Class II. This subparagraph shall apply only if the pool plant was subject to the provisions of this subparagraph or comparable provisions of another Federal milk order in the immediately preceding month;

(6) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or a fluid cream product) that is used to produce, or added to, any product specified in § 1060.40(b), but not in excess of the pounds of skim milk remaining in Class II;

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

(i) Other source milk (except that received in the form of a fluid milk product) and, if paragraph (a)(5) of this section applies, packaged inventory at the beginning of the month of products specified in § 1060.40(b)(1) that was not subtracted pursuant to paragraph (a)(4), (5), and (6) of this section;

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

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

(iv) Receipts of fluid milk products from a producer-handler as defined under this or any other Federal milk order and from an exempt government institution defined in § 1060.7(c)(5);

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

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

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

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

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

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

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

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

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

(9) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 1060.40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to paragraph (a)(5) and (7)(i) of this section;

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

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

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

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

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

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

(*a*) The estimated utilization of skim milk of all handlers in each class as announced for the month pursuant to § 1060.45(a); or

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

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

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

(13) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products and bulk fluid cream products from another pool plant according to the classification of such products pursuant to § 1060.42(a); and

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

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

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

§ 1060.45 Market administrator's reports and announcements concerning classification.

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

(a) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1060.44(a)(12) and the corresponding step of § 1060.44(b), estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose.

(b) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from another order plant, the class to which such receipts are allocated pursuant to § 1060.44 on the basis of such report, and, thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

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

(d) On or before the 12th day of each month, report to each cooperative association which so requests the amount

and class utilization of milk received by each handler during the immediately preceding month from such cooperative association in its capacity as a handler pursuant to § 1060.9(c) and directly from members of such cooperative association. For the purpose of this report the milk so received shall be prorated to each class in proportion to the utilization by such handler in each class remaining after allocation pursuant to § 1060.44(a) (1) through (13) and the corresponding steps of § 1060.44(b).

CLASS PRICES

§ 1060.50 Class prices.

Subject to the provisions of § 1060.52, the class prices for the month per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $1.30.

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

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

§ 1060.51 Basic formula price.

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

§ 1060.52 Plant location adjustments for handlers.

(a) For producer milk received at a pool plant or diverted to a nonpool plant located outside the base zone and classified as Class I milk or assigned Class I location adjustment credit pursuant to paragraph (b) of this section, the price computed pursuant to § 1060.50(a) shall be adjusted 1.2 cents for each 10 road miles or fraction thereof that such plant is located beyond the perimeter of the base zone.

(b) For the purposes of calculating such adjustments:

(1) All distances shall be by shortest hard-surfaced highways and/or all-weather-roads, as determined by the market administrator;

(2) The adjustment pursuant to this section shall be added to the Class I price if the plant is located in North or South Dakota and shall be subtracted from such price if the plant is located in Minnesota; and

(3) Transfers of fluid milk products between pool plants shall be assigned Class I milk disposition at the receiving plant, in excess of the sum of receipts at such plant from producers (including receipts from a handler described in § 1060.9(c)) and the pounds assigned as Class I milk to receipts from other order plants and unregulated supply plants. Such assignment is to be made first to shipping plants priced at the same price, next to plants having a higher price, and then in sequence to plants having a lower price, beginning with the plant at which the highest price would apply.

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

(d) The "base zone" shall include that portion of the marketing area in the counties of Clay, Marshall, Norman, Pennington, Polk, and Red Lake, all in the State of Minnesota; and the counties of Cass, Grand Forks, and Traill, all in the State of North Dakota.

§ 1060.53 Announcement of class prices.

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

§ 1060.54 Equivalent price.

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

UNIFORM PRICE

§ 1060.60 Handler's value of milk for computing uniform price.

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler with respect to each of his pool plants and of each handler described in § 1060.9 (b) and (c) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1060.44 by the applicable class prices and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1060.44(a)(14) and the corresponding step of § 1060.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1060.74, that are applicable at the location of the pool plant;

(c) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the pool plant or the Class II price, as the case may be, for the current month by the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1060.44(a)(9) and the corresponding step of § 1060.44(b);

(d) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1060.44(a)(7) (i) through (iv) and the corresponding step of § 1060.44 (b), excluding receipts of bulk fluid cream products from an other order plant;

(e) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the transferor-plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1060.44(a)(7) (v) and (vi) and the corresponding step of § 1060.44 (b);

(f) Add the amount obtained from multiplying the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1060.44(a) (11) and the corresponding step of § 1060.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order; and

(g) For the first month that this paragraph is effective, subtract the amount obtained from multiplying the difference between the Class I price for the preceding month applicable at the location of the pool plant and the Class III price for the current month by the hundredweight of skim milk and butterfat in any fluid milk product or product specified in § 1060.40(b) that was in the plant's inventory at the end of the preceding month and classified as Class I milk.

§ 1060.61 Computation of uniform price.

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

(a) Combine into one total the values computed pursuant to § 1060.60 for all handlers who filed the report prescribed in § 1060.30 for the month and who made the payments pursuant to §§ 1060.71 and 1060.73 for the preceding month;

(b) Add an amount equal to the total value of the minus location adjustments computed pursuant to § 1060.75;

(c) Subtract an amount equal to the total value of the plus location adjustments computed pursuant to § 1060.75;

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

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

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1060.60(f); and

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

§ 1060.62 Announcement of uniform price and butterfat differential.

The market administrator shall announce publicly on or before:

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

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

PAYMENTS FOR MILK

§ 1060.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all funds received pursuant to paragraph (a) of this section and out of which he shall make all payments required pursuant to paragraph (b) of this section:

(a) Payments made by handlers pursuant to §§ 1060.71, 1060.76, and 1060.77.

(b) Payments due handlers pursuant to §§ 1060.72 and 1060.77: *Provided*, That payments due any handler shall be offset by payments due from such handler pursuant to §§ 1060.71, 1060.76, 1060.77, 1060.85, and 1060.86.

§ 1060.71 Payments to the producer-settlement fund.

(a) On or before the 13th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the amount specified in paragraph (a)(1) of this section exceeds the amount specified in paragraph (a)(2) of this section: *Provided*, That payment made by a cooperative association as a handler shall not relieve the transferee-handler of any obligation on any such milk which is due the cooperative association, or otherwise due pursuant to §§ 1060.70 through 1060.75, and §§ 1060.77 through 1060.86:

(1) The sum of:

(i) The total value of milk of the handler for such month as determined pursuant to § 1060.60; and

(ii) In the case of a handler described in § 1060.9(c), the minimum amounts due from other handlers pursuant to § 1060.73 (c)(1) before adjustments for butterfat content.

(2) The sum of:

(i) The amount required to be paid producers (including payments to producers through cooperative associations) pursuant to § 1060.73 before adjustment for butterfat content, deductions authorized by the producer or cooperative association, or deductions for marketing services pursuant to § 1060.86; and

(ii) The value at the uniform price applicable at the location of the plant(s) from which received of other source milk for which a value is computed pursuant to § 1060.60(f).

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

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

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

§ 1060.72 Payments from the producer-settlement fund.

On or before the 14th day after the end of each month the market administrator shall pay (subject to the proviso of § 1060.70(b)) to each handler the amount if any by which the amount computed pursuant to § 1060.71(a)(2) exceeds the amount computed pursuant to § 1060.71(a)(1). The market administrator shall offset any payment due any handler against payments due from such handler. If the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the necessary funds are available.

§ 1060.73 Payments to producers and to cooperative associations.

Each handler shall make payment for milk received from producers or cooperative associations as follows:

(a) To each producer for whom payment is not made pursuant to paragraph (b) or (c) of this section:

(1) A final settlement on or before the 15th day after the end of each month during which producer milk was received, at not less than the uniform price for such milk, adjusted by the butterfat differential computed pursuant to § 1060.74 and subject to the location adjustment to producers pursuant to § 1060.75, and less the following amounts:

(i) The payments made pursuant to paragraph (a)(2) of this section;

(ii) Deductions for marketing services made pursuant to § 1060.86; and

(iii) Any deductions authorized by the producer: *Provided*, That if by such date such handler has not received full payment for such month pursuant to § 1060.72, he may reduce his total payment to all producers uniformly by not less than the amount of reduction in payment from the market administrator; the handler shall, however, complete such payments not later than the date for making such payments pursuant to this paragraph next following receipt of the balance from the market administrator; and

(2) A partial payment on or before the last day of each month with respect to producer milk received during the first 15 days of the month at not less than the Class III price for the preceding month (without deduction for hauling);

(b)(1) On or before the second day prior to the date payments are due individual producers as specified in this section, pay to a cooperative association which so requests and which the market administrator determines is authorized by its members to collect payments for their milk and which promises in writing to reimburse the handler the amount of any actual loss incurred by him because of any member's claim on the part of the cooperative association of the payments pursuant to paragraph (a) of this section an amount equal to the sum of the individual payments otherwise payable to such producers. The foregoing payment shall be made with respect to milk of each producer whom the cooperative association certifies is a member effective on and after the first day of the calendar month next following receipt of such certification through the last day of the month next preceding receipt of notice from the cooperative association of a termination of membership or until the original request is rescinded in writing by the cooperative association; and

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

(c) To a cooperative association which is a handler pursuant to § 1060.9(a) or (c) for milk which it caused to be delivered to such handler:

(1) A final settlement on or before the 13th day after the end of the month in which the skim milk or butterfat was received, an amount equal to not less than the applicable class prices, as adjusted by the butterfat differential specified in § 1060.74, at the location of the handler's pool plant for all skim milk and butterfat so delivered, less the amount of payment made pursuant to paragraph (c)(2) of this section; and

(2) A partial payment on or before the 26th day of each month at not less than the Class III price for the preceding month (without deduction for hauling) for all skim milk and butterfat so delivered during the first 15 days of the current month;

(d) In making payments to producers pursuant to paragraph (a) of this section, each handler shall furnish each producer with a supporting statement in such form that it may be retained by the producer, which shall show:

(1) The month and the identity of the handler and of the producer;

(2) The pounds per shipment, the total pounds, and the average butterfat test of milk delivered by the producer;

(3) The minimum rate or rates at which payment to the producer is required under the provisions of this section and §§ 1060.74 and 1060.75;

(4) The rate which is used in making payment, if such rate is other than the applicable minimum rate;

(5) The amount or the rate per hundredweight of each deduction claimed by the handler, including any deduction claimed under paragraph (c)(2) of this section and § 1060.86, together with a description of the respective deductions; and

(6) The net amount of payment to the producer; and

(e) Each handler who receives milk from producers, payment for which is to be made to a cooperative association pursuant to paragraph (b) of this section, shall report to such cooperative association with respect to each such producer, on forms approved by the market administrator, as follows:

(1) On or before the 20th day of the month, the total pounds of milk received during the first 15 days of the month;

(2) On or before the seventh day after the end of the month:

(i) The pounds per shipment, the total pounds of milk and the average butterfat test of milk received from such producer during the month;

(ii) The amount or rate and nature of any deductions; and

(iii) The amount of any payments to such producer pursuant to § 1060.77.

§ 1060.74 Butterfat differential.

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

§ 1060.75 Plant location adjustments for producers and on nonpool milk.

(a) For producer milk received at a pool plant or diverted to a nonpool plant located outside the base zone, the uniform price shall be adjusted at the rate set forth in § 1060.52.

(b) For purposes of computation pursuant to §§ 1060.71(b)(2) and 1060.72 the uniform price shall be adjusted at the rates set forth in § 1060.52 applicable at the location of the nonpool plant(s) from which the milk was received, except that the adjusted uniform price shall not be than the Class III price.

§ 1060.76 Payments by handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay on or before the 25th day after the end of the month to the market administrator for the producer-settlement fund the amount computed pursuant to paragraph (a) of this section. If the handler submits pursuant to §§ 1060.30(b) and 1060.31(b) the information necessary for making the computations, such handler may elect to pay in lieu of such payment the amount computed pursuant to paragraph (b) of this section:

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

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

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

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

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

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

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

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

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

(1) Determine the value that would have been computed pursuant to § 1060.60 for the partially regulated distributing plant if the plant had been a pool plant, subject to the following modifications:

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

(ii) Fluid milk products and bulk fluid cream products transferred from the partially regulated distributing plant to a pool plant or an other order plant shall be classified at the partially regulated distributing plant in the class to which allocated at the fully regulated plant. Such transfers shall be allocated to the extent possible to those receipts at the partially regulated distributing plant from pool plants and other order plants that are classified in the corresponding class pursuant to paragraph (b)(1)(i) of this section. Any such transfers remaining after the above allocation which are classified in Class I and for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1060.60 shall be priced at the uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee-plant, with such uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

(iii) If the operator of the partially regulated distributing plant so requests, the value of milk determined pursuant to § 1060.60 for such handler shall include, in lieu of the value of other source milk specified in § 1060.60(f) less the value of such other source milk specified in § 1060.71(a)(2)(ii), a value of milk determined pursuant to § 1060.60 for each nonpool plant that is not an other order plant which serves as a supply plant for such partially regulated distributing plant by making shipments to the partially regulated distributing plant during the month equivalent to the requirements of § 1060.7(b), subject to the following conditions:

(*a*) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1060.30(b) and 1060.31(b) similar reports for each such nonpool supply plant;

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

(*c*) The value of milk determined pursuant to § 1060.60 for such nonpool supply plant shall be determined in the same manner prescribed for computing the obligation of such partially regulated distributing plant; and

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

(i) The gross payments by the operator of such partially regulated distributing plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1060.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated;

(ii) If paragraph (b) (1) (iii) of this section applies, the gross payments by the operator of such nonpool supply plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1060.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated; and

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

§ 1060.77 Adjustment of accounts.

Whenever audit by the market administrator of any handler's reports, books, records, or accounts discloses errors resulting in moneys due the market administrator or any producer or cooperative association from such handler, the market administrator shall promptly notify such handler of the amount due and payment therefor shall be made within 5 days if such amount is due the market administrator, or on or before the next date for making payments to producers or a cooperative association, if such amount is due them. Whenever such audit discloses errors resulting in moneys due such handler from the market administrator, payment shall be made within 5 days.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

§ 1060.85 Assessment for order administration.

As his pro rata share of the expense of the administration of the order, each handler shall pay to the market administrator on or before the 15th day after the end of each month 4 cents per hundredweight or such lesser amount as the Secretary may prescribe with respect to skim milk and butterfat contained in:

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

(b) Other source milk allocated to Class I pursuant to § 1060.44(a) (7) and (11) and the corresponding steps in § 1060.44(b), except such other source milk that is excluded from the computations pursuant to § 1060.60 (d) and (f); and

(c) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the skim milk and butterfat subtracted pursuant to § 1060.76(a) (2).

§ 1060.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler in making payments to producers other than to himself pursuant to § 1060.73(a) (1) shall deduct 5 cents per hundredweight or such lesser amount as the Secretary may prescribe with respect to all milk received by such handler from producers during the month, and shall pay such deductions to the market administrator not later than the 15th day after the end of the month. Such money shall be used by the market administrator to verify or establish weights, samples, and tests of milk received from, and to provide market information to, such producers. Such services shall be performed in whole or in part by the market administrator or by an agent engaged by and responsible to him.

(b) In the case of producers for whom a cooperative association is performing, as determined by the Secretary, the services set forth in paragraph (a) of this section, each handler shall, in lieu of the deductions specified in paragraph (a) of this section, make such deductions from the payments to be made directly to producers pursuant to § 1060.73(a) (1), as are authorized by such producers and, on or before the 15th day after the end of each month, pay over such deductions to the association (of which such producers are members) rendering such services.

(c) When requested by the cooperative association a statement shall be supplied the cooperative association showing for each producer for whom such deduction is made the amount of such deduction, the total delivery of milk, and unless otherwise previously provided, the butterfat test.

PART 1061—MILK IN SOUTHEASTERN MINNESOTA-NORTHERN IOWA (DAIRYLAND) MARKETING AREA

Subpart—Order Regulating Handling

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ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

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1061.86 Deduction for marketing services.

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

Subpart—Order Regulating Handling

GENERAL PROVISIONS

§ 1061.1 General provisions.

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

DEFINITIONS

§ 1061.2 Southeastern Minnesota-Northern Iowa (Dairyland) marketing area.

"Southeastern Minnesota - Northern Iowa (Dairyland) marketing area", hereinafter called the "marketing area", means all the territory within the boundaries of the counties listed below, including all territory within such boundaries occupied by Government (municipal, State, or Federal) reservations, installations, institutions or other similar establishments:

MINNESOTA COUNTIES

Blue Earth.	Mower.
Brown.	Nicollet.
Cottonwood.	Olmsted.
Dodge.	Redwood.
Faribault.	Rice.
Fillmore.	Steele.
Freeborn.	Wabasha.
Goodhue.	Waseca.
Le Sueur.	Watonwan.
Martin.	Winona.

IOWA COUNTIES

Howard.	Winnebago.
Kossuth.	Winneshiek.
Mitchell (except city of Osage).	Worth.

§ 1061.3 Route disposition.

"Route disposition" means a delivery from a plant (including delivery from a retail store at such plant and delivery through vendors or distribution points) of any fluid milk product classified as

Class I to a retail or wholesale outlet other than a milk or filled milk plant. A delivery through a vendor or through a distribution point shall be considered a route disposition of the plant at the location of the wholesale or retail outlet to which delivery is made.

§ 1061.4 [Reserved]

§ 1061.5 Distributing plant.

"Distributing plant" means a plant from which there is route disposition (either directly or through another plant) in the marketing area during the month of a Grade A fluid milk product that is packaged in such plant.

§ 1061.6 Supply plant.

"Supply plant" means a plant from which a Grade A fluid milk product is shipped during the month to a distributing plant.

§ 1061.7 Pool plant.

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

(a) A distributing plant from which there is disposed of during the month not less than the percentages set forth in paragraph (a) (1) and (2) of this section of the total Grade A fluid milk products received during the month at such plant, including producer milk diverted under § 1061.13(d)(2), but excluding receipts of packaged fluid milk products from other pool distributing plants and receipts from unregulated supply plants and other order plants which are assigned pursuant to § 1061.44 (a)(8) (i) and (iii) and the corresponding step of § 1061.44(b):

(1) Not less than 10 percent of such receipts is disposed of from such plant as Class I milk in the marketing area as route disposition. Such disposition is to be exclusive of filled milk and receipts of packaged fluid milk products from other pool distributing plants; and

(2) Not less than 30 percent during the months of February–August and 40 percent during the months of September–January of such receipts is disposed of as Class I milk as route disposition. Such disposition is to be exclusive of filled milk and receipts of packaged fluid milk products from other pool distributing plants.

(b) A supply plant from which not less than 30 percent of its total Grade A milk receipts from dairy farmers during the month is delivered as fluid milk products, except filled milk, to pool plants pursuant to paragraph (a) of this section subject to paragraph (b) (1) and (2) of this section:

(1) Any plant which qualified pursuant to this paragraph in each of the immediately preceding months of September through November shall be a pool plant for the months of December through August unless written application is filed by the plant operator with the market administrator on or before the first day of any such month requesting the plant be designated a nonpool plant for such month and each subsequent month through August during which it would not otherwise qualify as a pool plant; and

(2) In determining the pool plant qualifications of a cooperative association's plant, member producer milk of such association which is delivered directly to plants described in paragraph (a) of this section shall be considered for purposes of this paragraph as having been first received at the cooperative's plant subject to the following conditions:

(i) Written request is made to the market administrator by the cooperative association prior to or during the month, designating the plant to be a pool plant pursuant to this subparagraph for the month, and for each month thereafter, until such request is withdrawn or terminated pursuant to paragraph (b)(2)(ii) of this section; and

(ii) Any such plant which in a succeeding month is pooled under the provisions of another order issued pursuant to the Act shall not be pooled under this subparagraph for the ensuing 12 months.

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

(1) A producer-handler plant or an exempt governmental plant;

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

(3) If a portion of a plant is operated separately from the Grade A portion of a plant meeting the conditions of paragraph (a) or (b) of this section and is not approved by any health authority for the receiving, processing, or packaging of any fluid milk product for Grade A disposition, it shall not be considered as part of a pool plant pursuant to this section; and

(4) Facilities used only as a reload point for transferring bulk milk from one tank truck to another shall not be a pool plant or part of a pool plant pursuant to this section.

§ 1061.8 Nonpool plant.

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

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

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

(c) "Partially regulated distributing plant" means a nonpool plant that is not an other order plant, a producer-handler plant or an exempt governmental plant and from which fluid milk products eligible for sale as Grade A in consumer-type packages or dispenser units or filled milk are disposed of as route disposition in the marketing area during the month.

(d) "Unregulated supply plant" means a nonpool plant that is not an other order plant, a producer-handler plant or an exempt governmental plant and from which a Grade A fluid milk product or filled milk is shipped during the month to a pool plant.

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

§ 1061.9 Handler.

"Handler" means:

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

(b) Any cooperative association with respect to producer milk which it causes to be diverted for its account from a pool plant of another handler pursuant to § 1061.13;

(c) Any cooperative association with respect to milk of its producers which is received from the farm for delivery to the pool plant of another handler in a tank truck owned and operated by or under contract to such cooperative association;

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

(e) A producer-handler; and

(f) Any person in his capacity as the operator of an other order plant from which during the month fluid milk products are either disposed of as route disposition in the marketing area or shipped to a pool plant.

§ 1061.10 Producer-handler.

"Producer-handler" means any person who operates a dairy farm and a distributing plant from which Class I milk of his own production is disposed of as route disposition in the marketing area, and who receives no milk or fluid milk products from the farms of other dairy farmers nor from any other source, except receipts by plant transfer from pool plants and who receives no nonfluid milk products from any source for use in reconstituted fluid milk products: *Provided*, That such person provides proof satisfactory to the market administrator that the care and management of all dairy animals and other resources necessary to produce the entire volume of fluid milk and milk products handled (excluding receipts from pool plants) and the operation of the processing and packaging business are wholly the personal enterprise and risk of such person.

§ 1061.11 [Reserved]

§ 1061.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk in compliance with the Grade A inspection requirements of a duly constituted health authority which milk is received as producer milk at a pool plant, or diverted pursuant to § 1061.13.

(b) "Producer" shall not include:

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

(2) Any person with respect to milk produced by him which is diverted to a pool plant from an other order plant if the other order designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to § 1061.44(a)(8)(iii) and the corresponding step of § 1061.44(b); and

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

§ 1061.13 Producer milk.

"Producer milk" means the skim milk and butterfat in Grade A milk:

(a) Received at a pool plant directly from a producer;

(b) Received at a pool plant from a handler described in § 1061.9(c);

(c) Received by a handler described in § 1061.9(c) from producers in excess of the quantity delivered to pool plants; or

(d) Moved as diverted milk, subject to the conditions in paragraphs (d)(1), (2), and (3) of this section, from a pool plant to a nonpool plant that is not a producer-handler plant. "Diverted milk" means, for any month, milk produced by a dairy farmer which a pool plant handler or a handler described in § 1061.9(b) caused to be moved from the farm to a nonpool plant that is not a producer-handler plant if such milk is claimed as producer milk and the following conditions have been met:

(1) During the months of February through August a cooperative association handler pursuant to § 1061.9(b), may divert for its account, without limit on the remaining days, the milk of any member who was a producer during the previous month or whose milk is delivered to a pool plant on at least 1 day during the current month. During the months of September through January such handler may divert as producer milk the milk of any member producer whose milk is delivered to a pool plant described in § 1061.7(a) on at least 1 day during the month except that the aggregate quantity of producer milk diverted by such handler shall not exceed the quantity of milk delivered during that month by all its member producers to pool plants described in § 1061.7(a);

(2) During February through August a handler in his capacity as the operator of a pool plant may divert for his account, without limit on the remaining days, the milk of any dairy farmer who was a producer during the previvous month or whose milk is received at his pool plant on at least 1 day during the current month. During the months of September through January such handler may divert as producer milk the milk of any producer whose milk is received at his pool plant on at least 1 day during the month except that the aggregate quantity of producer milk diverted by such handler shall not exceed the quantity of milk received during the month at his pool plant from all producers except the member producers of a cooperative which diverted milk during the month pursuant to paragraph (d)(1) of this section; and

(3) If milk receipts from dairy farmers are diverted in excess of the quantities allowed pursuant to paragraphs (d)(1) and (2) of this section, the diverting handler shall specify the dairy farmers whose milk was overdiverted. If the diverting handler does not specify the dairy farmers whose milk was overdiverted, only the milk of dairy farmers which is received at a pool plant during the month shall be producer milk for such month.

§ 1061.14 Other source milk.

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

(a) Receipts of fluid milk products and bulk products specified in § 1061.40(b)(1) from any source other than producers, handlers described in § 1061.9(c), or pool plants;

(b) Receipts in packaged form from other plants of products specified in § 1061.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1061.40(b)(1), and products produced at the plant during the same month) from any source which are reprocessed, converted into, or combined with another product in the plant during the month; and

(d) Receipts of any milk product (other than a fluid milk product or a product specified in § 1061.40(b)(1)) for which the handler fails to establish a disposition.

§ 1061.15 Fluid milk product.

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

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

(2) Any milk product not specified in paragraph (a)(1) of this section or in § 1061.40 (b) or (c)(1) (i) through (v) if it contains by weight at least 80 percent water and 6.5 percent nonfat milk solids and less than 9 percent butterfat and 20 percent total solids.

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

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

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

§ 1061.16 Fluid cream product.

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

§ 1061.17 Filled milk.

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

§ 1061.18 Cooperative association.

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

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

(b) Has full authority in the sale of milk of its members and is engaged in making collective sales of or marketing milk or its products for its members.

HANDLER REPORTS

§ 1061.30 Reports of receipts and utilization.

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

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

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

(2) Receipts of milk from handlers described in § 1061.9(c);

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

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1061.40(b)(1); and

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

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

also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1061.9 (b) and (c) shall report;

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

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

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

§ 1061.31 Payroll reports.

(a) On or before the 25th day after the end of each month, each handler described in § 1061.9 (a), (b), and (c) shall report to the market administrator his producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer:

(1) His name and address;

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

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

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

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1061.76 (b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1061.32 Other reports.

In addition to the reports required pursuant to §§ 1061.30 and 1061.31, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligation under the order.

CLASSIFICATION OF MILK

§ 1061.40 Classes of utilization.

Except as provided in § 1061.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1061.30 shall be classified as follows:

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

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

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

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

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

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

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

(4) Used to produce:

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

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

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

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

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

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

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

(1) Used to produce:

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

(ii) Butter;

(iii) Any milk product in dry form;

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

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

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

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

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

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

(5) In skim milk in any modified fluid milk product that is in excess of the quantity of skim milk in such product that was included within the fluid milk product definition pursuant to § 1061.15; and

(6) In shrinkage assigned pursuant to § 1061.41(a) to the receipts specified in § 1061.41(a) (2) and in shrinkage specified in § 1061.41(b) and (c).

§ 1061.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1061.30, the market administrator shall determine the following:

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

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

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

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

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant and milk received from a handler described in § 1061.9(c));

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1061.9(c), except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be 2 percent;

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

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

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

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

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

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

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1061.9 (b) or (c), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

§ 1061.42 Classification of transfers and diversions.

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

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant after the computations pursuant to § 1061.44(a)(12) and the corresponding step of § 1061.44(b);

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1061.44(a)(7) or the corresponding step of § 1061.44(b), the skim milk or butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor-handler received during the month other source milk to be allocated pursuant to § 1061.44(a) (11) or (12) or the corresponding steps of § 1061.44(b), the skim milk or butterfat so transferred, up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant.

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

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

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

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

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

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

(6) If the form in which any fluid milk product that is transferred to an other order plant is not defined as a fluid milk product under such other order, classification under this paragraph shall be in accordance with the provisions of § 1061.40.

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

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

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

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

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

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

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

(*a*) The transferor-handler or divertor-handler claims such classification in his report of receipts and utilization filed pursuant to § 1061.30 for the month within which such transaction occurred; and

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

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

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

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

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

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

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

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

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

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

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

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

(*b*) To such nonpool plant's receipts of Grade A milk from plants not fully regulated under any Federal milk order

which the market administrator determines constitute regular sources of Grade A milk for such nonpool plant;

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

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

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

§ 1061.43 General classification rules.

In determining the classification of producer milk pursuant to § 1061.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1061.30 and shall compute separately for each pool plant and for each cooperative association with respect to milk for which it is the handler pursuant to § 1061.9 (b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1061.40, 1061.41, and 1061.42;

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

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1061.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1061.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1061.9(a) for each of his pool plants separately and of each handler described in § 1061.9 (b) and (c) by allocating the handler's receipts of skim milk and butterfat to his utilization as follows:

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

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1061.41 (b);

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

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

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

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

(4) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 1061.40(b) (1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(5) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1061.40(b) (1) that were in inventory at the beginning of the month in packaged form, but not in excess of the pounds of skim milk remaining in Class II. This subparagraph shall apply only if the pool plant was subject to the provisions of this subparagraph or comparable provisions of another Federal milk order in the immediately preceding month;

(6) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or a fluid cream product) that is used to produce, or added to, any product specified in § 1061.40(b), but not in excess of the pounds of skim milk remaining in Class II;

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

(i) Other source milk (except that received in the form of a fluid milk product) and, if paragraph (a) (5) of this section applies, packaged inventory at the beginning of the month of products specified in § 1061.40(b) (1) that was not subtracted pursuant to paragraph (a) (4), (5), and (6) of this section;

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

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

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

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

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

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

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

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

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

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

(*c*) Multiply any plus quantity resulting above by the percentage that the receipts of skim milk in fluid milk prod-

ucts from unregulated supply plants that remain at this pool plant is of all such receipts remaining at this allocation step at all pool plants of the handler; and

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

(9) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 1061.40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to paragraph (a)(5) and (7)(i) of this section;

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

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

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

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

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

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

(*a*) The estimated utilization of skim milk of all handlers in each class as announced for the month pursuant to § 1061.45(a); or

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

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

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

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

(13) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products and bulk fluid cream products from another pool plant according to the classification of such products pursuant to § 1061.42(a); and

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

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

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

§ 1061.45 Market administrator's reports and announcements concerning classification.

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

(a) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1061.44(a)(12) and the corresponding step of § 1061.44(b), estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose.

(b) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from an other order plant, the class to which

such receipts are allocated pursuant to § 1061.44 on the basis of such report, and, thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

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

(d) On or before the 20th day of each month, report to each cooperative association which so requests the amount and class utilization of milk received by each handler during the immediately preceding month from such cooperative association in its capacity as a handler pursuant to § 1061.9(c) and directly from members of such cooperative association. For the purpose of this report, the milk so received shall be prorated to each class in proportion to the utilization by such handler in each class remaining after allocation pursuant to § 1061.44(a) (1) through (13), and the corresponding steps of § 1061.44(b).

CLASS PRICES

§ 1061.50 Class prices.

The class prices for the month per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $1.06.

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

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

§ 1061.51 Basic formula price.

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

§ 1061.52 [Reserved]

§ 106.53 Announcement of class prices.

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

§ 1061.54 Equivalent price.

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

UNIFORM PRICE

§ 1061.60 Handler's value of milk for computing uniform price.

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler with respect to each of his pool plants and of each handler described in § 1061.9 (b) and (c) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1061.44 by the applicable class prices and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1061.44(a)(14) and the corresponding step of § 1061.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1061.74;

(c) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price or the Class II price, as the case may be, for the current month by the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1061.44(a)(9) and the corresponding step of § 1061.44(b);

(d) Add the amount obtained from multiplying the difference between the Class I price and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1061.44(a)(7) and the corresponding step of § 1061.44(b), excluding receipts of bulk fluid cream products from another order plant;

(e) Add the amount obtained from multiplying the Class I price by the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1061.44(a)(11) and the corresponding step of § 1061.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order; and

(f) For the first month that this paragraph is effective, subtract the amount obtained from multiplying the difference between the Class I price for the preceding month and the Class III price for the current month by the hundredweight of skim milk and butterfat in any fluid milk product or product specified in § 1061.40 (b) that was in the plant's inventory at the end of the preceding month and classified as Class I milk.

§ 1061.61 Computation of uniform price.

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

(a) Combine into one total the values computed pursuant to § 1061.60 for all handlers who filed reports pursuant to § 1061.30 for the month and who made payments pursuant to § 1061.71 for the preceding month;

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

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

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1061.60(e); and

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

§ 1061.62 Announcement of uniform price and butterfat differential.

The market administrator shall announce publicly on or before:

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

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

PAYMENTS FOR MILK

§ 1061.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to §§ 1061.71, 1061.76, and 1061.77 and out of which he shall make all payments due handlers pursuant to §§ 1061.72 and 1061.77: *Provided,* That the market administrator shall offset any payments due any handler against payments due from such handler.

§ 1061.71 Payments to the producer-settlement fund.

(a) On or before the 14th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the amount specified in paragraph (a)(1) of this section exceeds the amount specified in paragraph (a)(2) of this section:

(1) The total value of milk of the handler for such month as determined pursuant to § 1061.60.

(2) The sum of:

(i) The value at the uniform price of such handler's receipts of producer milk; and

(ii) The value at the uniform price of other source milk for which a value is computed pursuant to § 1061.60(e).

(b) On or before the 25th day after the end of the month each person who operated an other order plant that was regulated during such month under an order providing for individual-handler

pooling shall pay to the market administrator an amount computed as follows:

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

(2) Compute the value of the reconstituted skim milk assigned in paragraph (b)(1) of this section to route disposition in this marketing area by multiplying the quantity of such skim milk by the difference between the Class I price under this part and the Class III price.

§ 1061.72 Payments from the producer settlement fund.

On or before the 16th day after the end of each month, the market administrator shall pay, subject to the proviso of § 1061.70, to each handler the amount if any, by which the amount computed pursuant to § 1061.71(a)(2) exceeds the amount computed pursuant to § 1061.71 (a)(1).

§ 1061.73 Payments to producers and to cooperative associations.

Each handler shall make payment for milk received from producers or cooperative associations as follows:

(a) To each producer for whom payment is not made pursuant to paragraph (b) and (c) of this section:

(1) On or befoer the 20th day of the following month not less than the uniform price, adjusted by the butterfat differential computed pursuant to § 1061.71 and less the following amounts:

(i) The payments made pursuant to paragraph (a)(2) of this section;

(ii) Deductions for marketing service pursuant to § 1061.86; and

(iii) Any proper deductions authorized by the producer: *Provided,* That if by such date such handler has not received full payment from the market administrator pursuant to § 1061.72 for such month, he may reduce pro rata his payments to producers by not more than the amount of such underpayment. Payments to producers shall be completed thereafter not later than the date for making payments pursuant to this paragraph next following after the receipt of the balance due from the market administrator; and

(2) A partial payment on or before the fifth day of the following month to each producer who had not discontinued shipping milk to such handler at not less than the Class III price for the preceding month for producer milk received during the first 15 days of the month (without deduction for hauling);

(b) Payments required in paragraph (a) of this section shall be made on or before the second day prior to the dates set forth in paragraph (a) of this section to a cooperative association (except as specified in paragraph (c) of this section) qualified under § 1061.18, or its duly authorized agent, if the cooperative association so requests and the market administrator determines it is authorized by its members to collect payments for their milk. Payments to the cooperative association under this paragraph shall be made subject to the condition that the association has provided the handler with a promise to reimburse the handler the amount of any actual loss incurred by such handler because of any improper claim on the part of the cooperative association;

(c) On or before the 11th day after the end of the month, each handler shall pay a cooperative association which is a handler with respect to all skim milk and butterfat received by him from a pool plant operated by such cooperative association not less than the applicable class prices as adjusted by the butterfat differential specified in § 1061.74; and

(d) In making payment to individual producers as required by § 1061.73, each handler shall furnish each producer from whom he received milk a supporting statement, in such form that it may be retained by the producer, which shall show:

(1) The month involved, and the identity of the handler and of the producer;

(2) The total pounds and the average butterfat content of the milk received from the producer;

(3) The minimum rate at which payment to the producer is required pursuant to § 1061.73;

(4) The rate used in making the payment if such rate is other than the applicable minimum;

(5) The amount (or rate) per hundredweight of each deduction claimed by the handler, including any deduction claimed under § 1061.86, together with a description of the respective deductions; and

(6) The net amount of the payment to the producer.

§ 1061.74 Butterfat differential.

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

§ 1061.75 [Reserved]

§ 1061.76 Payments by handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay on or before the 25th day after the end of the month to the market administrator for the producer-settlement fund the amount computed pursuant to paragraph (a) of this section. If the handler submits pursuant to §§ 1061.30(b) and 1061.31(b) the information necessary for making the computations, such handler may elect to pay in lieu of such payment the amount computed pursuant to paragraph (b) of this section:

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

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

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

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

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

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

(4) Multiply the remaining pounds by the difference between the Class I price and the uniform price; and

(5) Add the amount obtained from multiplying the pounds of reconstituted skim milk specified in paragraph (a)(3) of this section by the difference between the Class I price and the Class III price.

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

(1) Determine the value that would have been computed pursuant to § 1061.60 for the partially regulated distributing plant if the plant had been a pool plant, subject to the following modifications:

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

(ii) Fluid milk products and bulk fluid cream products transferred from the partially regulated distributing plant to a pool plant or an other order plant shall be classified at the partially regulated distributing plant in the class to which allocated at the fully regulated plant. Such transfers shall be allocated to the extent possible to those receipts at the partially regulated distributing plant from pool plants and other order plants that are classified in the corresponding class pursuant to paragraph (b)(1)(i) of this section. Any such transfers remaining after the above allocation which are classified in Class I and for which a value is computed for the handler operating the partially regulated distributing

plant pursuant to § 1061.60 shall be priced at the uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee-plant, with such uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

(iii) If the operator of the partially regulated distributing plant so requests, the value of milk determined pursuant to § 1061.60 for such handler shall include, in lieu of the value of other source milk specified in § 1061.60(e) less the value of such other source milk specified in § 1061.71(a)(2)(ii), a value of milk determined pursuant to § 1061.60 for each nonpool plant that is not an other order plant which serves as a supply plant for such partially regulated distributing plant by making shipments to the partially regulated distributing plant during the month equivalent to the requirements of § 1061.7(b) subject to the following conditions:

(*a*) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1061.30 (b) and 1061.31(b) similar reports for each such nonpool supply plant;

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

(*c*) The value of milk determined pursuant to § 1061.60 for such nonpool supply plant shall be determined in the same manner prescribed for computing the obligation of such partially regulated distributing plant; and

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

(i) The gross payments by the operator of such partially regulated distributing plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1061.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated;

(ii) If paragraph (b)(1)(iii) of this section applies, the gross payments by the operator of such nonpool supply plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1061.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated; and

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

§ 1061.77 Adjustment of accounts.

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

§ 1061.78 Charges on overdue accounts.

The unpaid obligation of a handler pursuant to §§ 1061.71, 1061.76, and 1061.77 shall be increased three-fourths of 1 percent for each month or portion thereof that such obligation is overdue: *Provided*, That,

(a) The amounts payable pursuant to this section shall be computed monthly on each unpaid obligation, which shall include any unpaid charges previously made pursuant to this section; and

(b) For the purpose of this section, any obligation that was determined at a date later than prescribed by the order because of a handler's failure to submit a report to the market administrator when due, shall be considered to have been payable by the date it would have been due if the report had been filed when due.

Administrative Assessment and Marketing Service Deduction

§ 1061.85 Assessment for order administration.

As his pro rata share of the expense of administration, each handler shall pay to the market administrator on or before the 14th day after the end of the month, 4 cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to milk handled during the month as follows:

(a) Each handler (excluding a cooperative association as the operator of a pool plant with respect to milk transferred in bulk to a pool plant of another handler) with respect to his receipts of producer milk (including such handler's own-farm production, and milk received in bulk from a pool plant owned and operated by a cooperative association);

(b) Other source milk allocated to Class I pursuant to § 1061.44(a) (7) and (11) and the corresponding steps of § 1061.44(b), except such other source milk that is excluded from the computations pursuant to § 1061.60 (d) and (e); and

(c) Each handler in his capacity as the operator of a partially regulated distributing plant with respect to his route disposition in the marketing area that exceeds the skim milk and butterfat subtracted pursuant to § 1061.76(a)(2).

§ 1061.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler in making payments to each producer pursuant to § 1061.73 shall deduct 6 cents per hundredweight or such lesser amount as the Secretary may prescribe with respect to producer milk received by such handler (except such handler's own farm production) during the month, and shall pay such deductions to the market administrator not later than the 18th day after the end of the month. Such moneys shall be used by the market administrator to verify or establish weights, samples, and tests of producer milk and to provide producers with market information. Such services shall be performed by the market administrator or by an agent engaged by and responsible to him.

(b) In the case of member producers for whom a cooperative association is performing, as determined by the Secretary, the services set forth in paragraph (a) of this section, each handler shall make, in lieu of the deductions specified in paragraph (a) of this section such deductions as are authorized by such producers and, on or before the 18th day after the end of each month, pay over such deductions to the association rendering such services.

PART 1063—MILK IN QUAD CITIES-DUBUQUE MARKETING AREA

Subpart—Order Regulating Handling

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

Subpart—Order Regulating Handling

GENERAL PROVISIONS

§ 1063.1 General provisions.

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

DEFINITIONS

§ 1063.2 Quad Cities-Dubuque marketing area.

"Quad Cities-Dubuque marketing area", hereinafter called the marketing area, means the territory within the boundaries of the counties of Clinton, Dubuque, Jackson, Muscatine, and Scott in the State of Iowa; the counties of Henry, Mercer, and Rock Island, and the city of East Dubuque, in the State of Illinois, including territory within such boundaries that is occupied by Government (municipal, State or Federal) reservations, installations, institutions, or other establishments.

§ 1063.3 [Reserved]

§ 1063.4 [Reserved]

§ 1063.5 Distributing plant.

"Distributing plant" means a plant which is approved by an appropriate health authority for the processing or packaging of Grade A milk from which any fluid milk product is processed or packaged and disposed of during the month on routes (including routes operated by vendors) or through plant stores to retail or wholesale outlets (except pool plants) located in the marketing area.

§ 1063.6 Supply plant.

"Supply plant" means a plant from which milk or skim milk which is acceptable to the appropriate health authority for distribution in the marketing area under a Grade A label is shipped during the month to a pool plant qualified pursuant to § 1063.7.

§ 1063.7 Pool plant.

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

(a) A distributing plant from which:

(1) The volume of Class I packaged fluid milk products, except filled milk, disposed of during the month either on routes (including routes operated by vendors) or through plant stores to retail or wholesale outlets or moved to other plants, less receipts of packaged fluid milk products, other than filled milk, from other pool distributing plants, is not less than 45 percent (40 percent during each of the months of February through August) of the total Grade A fluid milk products, except filled milk, received at such plant, exclusive of receipts of packaged fluid milk products from other pool distributing plants and receipts from other order plants which are assigned pursuant to § 1063.44(a)(8)(iii) and the corresponding step of § 1063.44(b); and

(2) Not less than 15 percent of net receipts specified in paragraph (a)(1) of this section is so disposed of during the month in the marketing area on routes, except that a plant that meets such minimum requirement under this subparagraph during each of the months of September through January need dispose of only 10 percent or more of such receipts in the marketing area on routes during each of the following months of February through August.

(b) A supply plant from which the volume of fluid milk products, except filled milk, shipped during the month to plants qualified pursuant to paragraph (a) of this section is not less than 35 percent of the Grade A milk received at such plant from dairy farmers during such month: *Provided,* That if such shipments are not less than 50 percent of the receipts of Grade A milk directly from dairy farmers at such plant during the immediately preceding period of September through November, such plant shall be a pool plant for the months of December through August, unless written application is filed with the market administrator on or before the 1st day of any of the months of December through August to be designated a nonpool plant for such month and for each subsequent month through August.

(c) A plant operated by a cooperative association from whose members the total pounds of producer milk received at the pool plants of other handlers during the month, or during the 12-month period immediately preceeding such month, are more than the total pounds of Grade A milk received at its plant from dairy farmers during the corresponding period: *Provided,* That if written application is filed with the market administrator on or before the 5th day of any month such plant may be designated a nonpool plant for such month and for any subsequent months.

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

(1) A producer-handler plant;

(2) A plant otherwise qualified as a pool plant pursuant to paragraph (a), (b), or (c), of this section during any month in which such plant would be subject to the classification and pricing provisions of another order issued pursuant to the Act unless the disposition of fluid milk products, except filled milk, from such plant to pool plants qualified under paragraph (a), (b), or (c), of this section and to retail and wholesale outlets in the Quad Cities-Dubuque marketing area exceeds such disposition to retail and wholesale outlets in such other marketing area and to pool plants regulated by such other order except in the following circumstances:

(i) If a distributing plant were qualified pursuant to paragraph (a) of this section during each of the 3 immediately preceding months, it would continue to be subject to all the provisions of this part until after the 3d consecutive month in which it remains so qualified and has a greater proportion of its fluid milk product disposition, except filled milk, made in the above described manner in such other marketing area, unless, notwithstanding the provisions of this paragraph, it is regulated under such other order; or

(ii) A distributing plant qualified pursuant to paragraph (a) of this section that is fully regulated under another Federal order but which has greater fluid milk product (except filled milk) disposition during the month on routes in the Quad Cities-Dubuque marketing area and to pool plants qualified on the basis of route distribution in the Quad Cities-Dubuque marketing area than in such other Federal order marketing area; and

(3) That portion of a plant that is physically apart from the Grade A portion of such plant, is operated separately and is not approved by any health authorities for the receiving, processing, or packaging of any fluid milk product for Grade A disposition.

§ 1063.8 Nonpool plant.

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

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

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

(c) "Partially regulated distributing plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant, from which fluid milk products in consumer-type packages or dispenser units are distributed on routes in the marketing area during the month.

(d) "Unregulated supply plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant from which fluid milk products are shipped during the month to a pool plant.

§ 1063.9 Handler.

"Handler" means:

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

(b) Any cooperative association with respect to the milk from producers diverted pursuant to § 1063.13 by the cooperative association for the account of such association;

(c) [Reserved]

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

(e) A producer-handler;

(f) Any person who operates an other order plant described in § 1063.7(d); and

(g) Any person in his capacity as the operator of an unregulated supply plant.

§ 1063.10 Producer-handler.

"Producer-handler" means any person who operates a dairy farm and a distributing plant but who receives no milk from producers or other source milk.

§ 1063.11 [Reserved]

§ 1063.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk in compliance with the Grade A inspection requirements of a duly constituted health authority, which milk is received at a pool plant or diverted pursuant to § 1063.13(b).

(b) "Producer" shall not include:

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

(2) Any person with respect to milk produced by him which is diverted to a pool plant from an other order plant if the other order designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to § 1063.44(a)(8)(iii) and the corresponding step of § 1063.44(b); and

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

§ 1063.13 Producer milk.

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

(a) Received at a pool plant; or

(b) Diverted by the operator of a pool plant or by a cooperative association to a nonpool plant that is not a producer-handler plant, subject to the following conditions:

(1) For pricing purposes under this part such milk shall be accounted for as received by the diverting handler at the location of the plant to which diverted: *Provided*, That milk diverted to a plant located less than 75 miles (by the shortest highway distance as determined by the market administrator) from the pool plant from which diverted or to a plant at which a higher uniform price would be applicable, shall be deemed to be received by the diverting handler at the location of the plant from which diverted; and

(2) In any of the months of September through January, milk diverted from the farm of a producer on days in excess of the number of days that milk was delivered to a pool plant from such farm during the month shall not be producer milk.

§ 1063.14 Other source milk.

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

(a) Receipts of fluid milk products and bulk products specified in § 1063.40(b)(1) from any source other than producers or pool plants;

(b) Receipts in packaged form from other plants of products specified in § 1063.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1063.40(b)(1), and products produced at the plant during the same month) from any source which are reprocessed, converted into, or combined with another product in the plant during the month; and

(d) Receipts of any milk product (other than a fluid milk product or a product specified in § 1063.40(b)(1)) for which the handler fails to establish a disposition.

§ 1063.15 Fluid milk product.

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

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

(2) Any milk product not specified in paragraph (a)(1) of this section or in § 1063.40 (b) or (c)(1)(i) through (v) if it contains by weight at least 80 percent water and 6.5 percent nonfat milk solids and less than 9 percent butterfat and 20 percent total solids.

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

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

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

§ 1063.16 Fluid cream product.

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

§ 1063.17 Filled milk.

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

§ 1063.18 Cooperative association.

"Cooperative association" means any cooperative marketing association which the Secretary determines:

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

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

HANDLER REPORTS

§ 1063.30 Reports of receipts and utilization.

On or before the 7th day after the end of each month, each handler shall report for such month to the market administrator, in the detail and on the forms prescribed by the market administrator, as follows:

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

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

(2) [Reserved]

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

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1063.40(b)(1); and

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

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

(c) Each handler described in § 1063.9(b) shall report:

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

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

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to his re-

ceipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

§ 1063.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1063.9 (a) and (b) shall report to the market administrator his producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer:

(1) His name and address;

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

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

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

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1063.76 (b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1063.32 Other reports.

In addition to the reports required pursuant to §§ 1063.30 and 1063.31, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligation under the order.

CLASSIFICATION OF MILK

§ 1063.40 Classes of utilization.

Except as provided in § 1063.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1063.30 shall be classified as follows:

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

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

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

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

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

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

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

(4) Used to produce:

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

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

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

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

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

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

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

(1) Used to produce:

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

(ii) Butter;

(iii) Any milk product in dry form;

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

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

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

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

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

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

(5) In skim milk in any modified fluid milk product that is in excess of the quantity of skim milk in such product that was included within the fluid milk product definition pursuant to § 1063.15; and

(6) In shrinkage assigned pursuant to § 1063.41 (a) to the receipts specified in § 1063.41 (a) (2) and in shrinkage specified in § 1063.41 (b) and (c).

§ 1063.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1063.30, the market administrator shall determine the following:

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

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

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

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

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

(2) [Reserved]

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

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

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

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

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

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1063.9(b), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

§ 1063.42 Classification of transfers and diversions.

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

plants request the same classification in another class. In either case, the classification of such transfers shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant after the computations pursuant to § 1063.44(a)(12) and the corresponding step of § 1063.44(b);

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1063.44(a)(7) or the corresponding step of § 1063.44(b), the skim milk or butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor-handler received during the month other source milk to be allocated pursuant to § 1063.44 (a) (11) or (12) or the corresponding steps of § 1063.44(b), the skim milk or butterfat so transferred, up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant.

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

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

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

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

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

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

(6) If the form in which any fluid milk product that is transferred to an other order plant is not defined as a fluid milk product under such other order, classification under this paragraph shall be in accordance with the provisions of § 1063.40.

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

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

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

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

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

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

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

(*a*) The transferor-handler or divertor-handler claims such classification in his report of receipts and utilization filed pursuant to § 1063.30 for the month within which such transaction occurred; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

plant that are set forth in this subparagraph.

§ 1063.43 General classification rules.

In determining the classification of producer milk pursuant to § 1063.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1063.30 and shall compute separately for each pool plant and for each cooperative association with respect to milk for which it is the handler pursuant to § 1063.9(b) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1063.40, 1063.41, and 1063.42;

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

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1063.9(b) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1063.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1063.9(a) for each of his pool plants separately and of each handler described in § 1063.9(b) by allocating the handler's receipts of skim milk and butterfat to his utilization as follows:

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

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1063.41(b);

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

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

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

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

(4) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 1063.40(b)(1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(5) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1063.40(b)(1) that were in inventory at the beginning of the month in packaged form, but not in excess of the pounds of skim milk remaining in Class II. This subparagraph shall apply only if the pool plant was subject to the provisions of this subparagraph or comparable provisions of another Federal milk order in the immediately preceding month;

(6) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or a fluid cream product) that is used to produce, or added to, any product specified in § 1063.40(b), but not in excess of the pounds of skim milk remaining in Class II;

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

(i) Other source milk (except that received in the form of a fluid milk product) and, if paragraph (a)(5) of this section applies, packaged inventory at the beginning of the month of products specified in § 1063.40(b)(1) that was not subtracted pursuant to paragraph (a)(4), (5), and (6) of this section;

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

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

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

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

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

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

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

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

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

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

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

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

(9) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 1063.40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to paragraph (a)(5) and (7)(i) of this section;

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

(11) Subject to the provisions of paragraph (a)(11)(i) and (ii) of this section, subtract from the pounds of skim milk remaining in each class at the plant, pro rata to the total pounds of skim milk remaining in Class I and in Class II and

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

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

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

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

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

(*a*) The estimated utilization of skim milk of all handlers in each class as announced for the month pursuant to § 1063.45(a); or

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

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

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

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

(13) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products and bulk fluid cream products from another pool plant according to the classification of such products pursuant to § 1063.42(a); and

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

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

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

§ 1063.45 Market administrator's reports and announcements concerning classification.

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

(a) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1063.44(a)(12) and the corresponding step of § 1063.44(b), estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose.

(b) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from an other order plant, the class to which such receipts are allocated pursuant to § 1063.44 on the basis of such report, and, thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

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

(d) On or before the 10th day after the end of each month, report to each cooperative association, which so requests, the percentage of milk caused to be delivered by the cooperative association or its members to the pool plant(s) of each handler during the month, which was utilized in each class. For the purpose of this report, the milk so delivered shall be allocated to each class for each handler in the same ratio as all producer milk received by such handler during the month.

Class Prices

§ 1063.50 Class prices.

Subject to the provisions of § 1063.52, the class prices for the month per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $1.33.

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

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

§ 1063.51 Basic formula price.

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

§ 1063.52 Plant location adjustments for handlers.

(a) For milk received from producers at a pool plant and disposed of as Class I milk or assigned Class I location adjustment credit pursuant to paragraph (b) of this section, the price specified in § 1063.50(a) shall be adjusted as follows:

(1) At a plant in Dubuque and Jackson Counties, Iowa, and East Dubuque, Ill., subtract 10 cents;

(2) At a plant located outside the marketing area, north of U.S. Highway No. 80, and, except as provided in paragraph (a) (3) and (4) of this section, 70 miles or more, by the shortest hard-surfaced highway distance as determined by the market administrator, from the nearer of the City Hill, Rock Island, Ill., or the Post Office, West Liberty, Iowa, subtract 10 cents and subtract an additional 1.5 cents for each 10 miles or fraction thereof that such distance exceeds 80 miles;

(3) At a plant located in that Iowa territory beyond 70 miles from the nearer of the City Hall, Rock Island, Ill., or the Post Office, West Liberty, Iowa, and south of U.S. Highway No. 80, or within the Des Moines, Iowa, marketing area as specified in Part 1079, add any amount by which the price specified in § 1063.50(a) is exceeded by the applicable Class I price at the same location pursuant to Part 1079 regulating the handling of milk in the Des Moines, Iowa, marketing area; and

(4) At a plant located within the Central Illinois marketing area as specified in Part 1050, add any amount by which the price specified in § 1063.50(a) is exceeded by the applicable Class I price at the same location pursuant to Part 1050 regulating the handling of milk in the Central Illinois marketing area.

(b) For purposes of calculating such adjustments, transfers between pool plants shall be assigned Class I disposition at the tranferee-plant, in excess of the sum of receipts at such plant from producers, and the volume assigned as Class I to receipts from other order plants and unregulated supply plants, such assignment to be made first to transferor-plants having the same Class I price, next to transferor-plants having a higher Class I price, and then in sequence to the plants having a lower Class I price beginning with the plant at which the highest Class I price would apply.

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

§ 1063.53 Announcement of class prices.

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

§ 1063.54 Equivalent price.

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

Uniform Price

§ 1063.60 Handler's value of milk for computing uniform price.

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler with respect to each of his pool plants and of each handler described in § 1063.9(b) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1063.44 by the applicable class prices and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1063.44(a)(14) and the corresponding step of § 1063.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1063.74, that are applicable at the location of the pool plant;

(c) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the pool plant or the Class II price, as the case may be, for the current month by the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1063.44 (a)(9) and the corresponding step of § 1063.44(b);

(d) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1063.44(a)(7) (i) through (iv) and the corresponding step of § 1063.44 (b), excluding receipts of bulk fluid cream products from an other order plant;

(e) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the transferor-plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1063.44(a)(7) (v) and (vi) and the corresponding step of § 1063.44 (b); and

(f) Add the amount obtained from multiplying the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1063.44 (a)(11) and the corresponding step of § 1063.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

§ 1063.61 Computation of uniform price.

For each month the market administrator shall compute a uniform price for milk of 3.5 percent butterfat content f.o.b. Rock Island, Ill., as follows:

(a) Combine into one total the values computed pursuant to § 1063.60 for all handlers who made the reports prescribed in § 1063.30 for such month, except those in default of payments required pursuant to § 1063.71 for the preceding month;

(b) Add the aggregate of the values of minus location adjustments and subtract the aggregate of all plus location adjustments pursuant to § 1063.75;

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

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

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1063.60(f); and

(e) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (d) of this section. The result shall be known as the uniform price for milk received from producers.

§ 1063.62 Announcement of uniform price and butterfat differential.

The market administrator shall announce publicly on or before:

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

(b) The 10th day after the end of each month the uniform price for such month.

PAYMENTS FOR MILK

§ 1063.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to §§ 1063.71, 1063.76, and 1063.77 and out of which he shall make all payments to handlers pursuant to §§ 1063.72 and 1063.77.

§ 1063.71 Payments to the producer-settlement fund.

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

(1) The total value of milk of the handler for such month as determined pursuant to § 1063.60.

(2) The sum of:

(i) The value at the uniform price, as adjusted pursuant to § 1063.75, of such handler's receipts of producer milk; and

(ii) The value at the uniform price applicable at the location of the plant from which received of other source milk for which a value is computed pursuant to § 1063.60(f).

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

(1) Determine the quantity of reconstituted skim milk in filled milk in route disposition from such plant in the marketing area which was allocated to Class I at such plant. If there is such route disposition from such plant in marketing areas regulated by two or more 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.

§ 1063.72 Payments from the producer-settlement fund.

On or before the 14th day after the end of each month the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1063.71(a)(2) exceeds the amount computed pursuant to § 1063.71(a)(1): *Provided*, That if the balance in the producer-settlement fund is insufficient to make all payments pursuant to this paragraph, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the necessary funds are available. A handler who has not received the balance of such payments from the market administrator shall not be considered in violation of § 1063.73 if he reduces his payments to producers by not more than the amount of the reduction in payment from the producer-settlement fund.

§ 1063.73 Payments to producers and to cooperative associations.

Each handler shall make payment as follows:

(a) On or before the 17th day after the end of each month during which milk was received, to each producer for milk received from him and for which payment is not made pursuant to paragraph (b) of this section, at not less than the uniform price as adjusted pursuant to §§ 1063.74 and 1063.75.

(b) On or before the 15th day after the end of each month during which the milk was received, to a cooperative association for milk which it caused to be delivered to such handler from producers, if such cooperative association is authorized to collect such payments for its member producers and exercises such authority, an amount equal to the sum of the individual payments otherwise payable to such producers.

(c) On or before the 10th day after the end of the month, each handler shall pay to each cooperative association which is also a handler, for milk received from it not less than the value of such milk as classified pursuant to this part at the respective class prices, as adjusted by the butterfat differential specified in § 1063.74, that are applicable at the location of the receiving handler's pool plant.

§ 1063.74 Butterfat differential.

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

§ 1063.75 Plant location adjustments for producers and on nonpool milk.

(a) The uniform price for producer milk pursuant to § 1063.61 received at a pool plant shall be adjusted according to the location of the pool plant, at the rates set forth in § 1063.52; and

(b) For purposes of computations pursuant to §§ 1063.71 and 1063.72 the uniform price shall be adjusted at the rates set forth in § 1063.52 applicable at the location of the nonpool plant from which the milk was received, except that the adjusted uniform price shall not be less than the Class III price.

§ 1063.76 Payments by handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay on or before the 25th day after the end of the month to the market administrator for the producer-settlement fund the amount computed pursuant to paragraph (a) of this section. If the handler submits pursuant to §§ 1063.30(b) and 1063.31(b) the information necessary for making the computations, such handler may elect to pay in lieu of such payment the amount computed pursuant to paragraph (b) of this section:

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

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

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

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

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

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

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

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

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

(1) Determine the value that would have been computed pursuant to § 1063.60 for the partially regulated distributing plant if the plant had been a pool plant, subject to the following modifications:

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

such products were classified at the fully regulated plant;

(ii) Fluid milk products and bulk fluid cream products transferred from the partially regulated distributing plant to a pool plant or an other order plant shall be classified at the partially regulated distributing plant in the class to which allocated at the fully regulated plant. Such transfers shall be allocated to the extent possible to those receipts at the partially regulated distributing plant from pool plants and other order plants that are classified in the corresponding class pursuant to paragraph (b)(1)(i) of this section. Any such transfers remaining after the above allocation which are classified in Class I and for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1063.60 shall be priced at the uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee-plant, with such uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

(iii) If the operator of the partially regulated distributing plant so requests, the value of milk determined pursuant to § 1063.60 for such handler shall include, in lieu of the value of other source milk specified in § 1063.60(f) less the value of such other source milk specified in § 1063.71(a)(2)(ii), a value of milk determined pursuant to § 1063.60 for each nonpool plant that is not an other order plant which serves as a supply plant for such partially regulated distributing plant by making shipments to the partially regulated distributing plant during the month equivalent to the requirements of § 1063.7(b) subject to the following conditions:

(*a*) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1063.30(b) and 1063.31(b) similar reports for each such nonpool supply plant;

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

(*c*) The value of milk determined pursuant to § 1063.60 for such nonpool supply plant shall be determined in the same manner prescribed for computing the obligation of such partially regulated distributing plant; and

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

(i) The gross payments by the operator of such partially regulated distributing plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1063.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated;

(ii) If paragraph (b)(1)(iii) of this section applies, the gross payments by the operator of such nonpool supply plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1063.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated; and

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

§ 1063.77 Adjustment of accounts.

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

Administrative Assessment and Marketing Service Deduction

§ 1063.85 Assessment for order administration.

As his pro rata share of the expense of administration of the order, each handler shall pay to the market administrator on or before the 15th day after the end of the month 3 cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to: (a) Producer milk, (b) other source milk allocated to Class I pursuant to § 1063.44(a)(7) and (11) and the corresponding steps of § 1063.44(b), except such other source milk that is excluded from the computations pursuant to § 1063.60(d) and (f), and (c) Class I milk disposed of from a partially regulated distributing plant on routes in the marketing area that exceeds the skim milk and butterfat subtracted pursuant to § 1063.76(a)(2).

§ 1063.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler in making payments to each producer pursuant to § 1063.73, shall deduct 6 cents per hundredweight or such lesser amount as the Secretary may prescribe with respect to all milk received by such handler from such producer (except such handler's own farm production), during the month, and shall pay such deductions to the market administrator not later than the 15th day after the end of the month. Such money shall be used by the market administrator to verify or establish weights, samples, and tests of milk received by handlers from such producers during the month and to provide such producers with market information.

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

PART 1064—MILK IN THE GREATER KANSAS CITY MARKETING AREA

Subpart—Order Regulating Handling

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

Subpart—Order Regulating Handling

GENERAL PROVISIONS

§ 1064.1 General provisions.

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

DEFINITIONS

§ 1064.2 Greater Kansas City marketing area.

"Greater Kansas City marketing area," hereinafter called "marketing area," means all the territory within the boundaries of the counties listed below, including territory within such boundaries occupied by government (municipal, State, or Federal) reservations, installations, institutions, or other similar establishments:

MISSOURI COUNTIES

Andrew.	Henry.
Atchison.	Holt.
Bates.	Jackson.
Buchanan.	Johnson.
Cass.	Lafayette.
Clay.	Nodaway.
Clinton.	Pettis.
Daviess.	Platte.
De Kalb.	St. Clair.
Gentry.	Worth.

KANSAS COUNTIES

Atchison.	Marshall.
Brown.	Miami.
Clay.	Morris.
Cloud.	Nemaha.
Dickinson.	Ottawa.
Doniphan.	Pottawatomie.
Douglas.	Republic.
Geary.	Riley.
Jackson.	Saline.
Jefferson.	Shawnee.
Johnson.	Wabaunsee.
Leavenworth.	Washington.
Lyon.	Wyandotte.

§ 1064.3 Route disposition.

"Route disposition" means a delivery (either direct or through a distributing facility such as a distribution point, a plant store, a vendor, or vending machine), other than a delivery to a pool plant or a nonpool plant, of a fluid milk product classified as Class I milk.

§ 1064.4 [Reserved]

§ 1064.5 Distributing plant.

"Distributing plant" means a plant from which during the month there is route disposition in the marketing area of Grade A fluid milk products that are processed or packaged in such plant.

§ 1064.6 Supply plant.

"Supply plant" means a plant from which a Grade A fluid milk product is shipped during the month to a pool plant.

§ 1064.7 Pool plant.

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

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

(1) Route disposition, except filled milk, in the marketing area that is not less than 15 percent of the total Grade A fluid milk products, except filled milk, received at such plant, including producer milk diverted to other plants pursuant to § 1064.13 by the handler operating such plant; and

(2) Route disposition, except filled milk, that is not less than the following percentage of the total Grade A fluid milk products, except filled milk, received at such plant, including producer milk diverted to other plants pursuant to § 1064.13 by the handler operating such plant: *Provided*, That the combined receipts and disposition of each handler who operates more than one distributing plant, each of which meets the performance requirements of paragraph (a)(1) of this section, shall be used in determining the percentages specified in this subparagraph:

(i) April through June, 35 percent;

(ii) September and October, 50 percent; and

(iii) All other months, 45 percent.

(b) A supply plant from which during the month 50 percent or more of the Grade A milk received at such plant from dairy farmers (including receipts from handler described in § 1064.9(c), except receipts of milk diverted pusuant to § 1064.13) is disposed of as fluid milk products (except filled milk) in one or both of the following ways: (1) Shipped to and received at pool distributing plants, or (2) as a route disposition sale in the marketing area. A supply plant which is a pool plant under this paragraph during each month of September through January shall be pooled for the following months of February through August, if the required percentage pursuant to this paragraph is not met, unless the plant operator files written request with the market administrator that such plant not be a pool plant, such nonpool status to be effective the first month following such request and thereafter until the plant qualifies as a pool plant on the basis of shipments.

(c) A supply plant operated by a cooperative association in any month in which the member producer milk of such cooperative association received at pool distributing plants during the current month, or immediately preceding 12-month period ending with the current month, either by transfer from such supply plant or directly from member producers' farms, is 50 percent or more of such cooperative's total member producer milk. Such direct deliveries from member producers' farms shall be considered as having been received first at the plant of such cooperative association for the purpose of determining the qualification of such plant as a pool plant pursuant to this paragraph. If two or more cooperative associations desire to qualify a supply plant operated by one of the associations as a pool plant on the basis of their combined deliveries to pool distributing plants and have filed a written request to this effect with the market administrator on or before the first day of the month the agreement is effective, such a supply plant shall be a pool plant during the month if the above specified percentage of the total member producer milk of such cooperative associations was received at pool distributing plants during the current month, or the immediately preceding 12-month period ending with the current month.

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

(1) A producer-handler plant;

(2) A distributing plant or supply plant operated by a State educational institution;

(3) A plant from which there is route disposition in the marketing area of less than an average of 600 pounds per day;

(4) A distributing plant qualified pursuant to paragraph (a) of this section which also meets the pooling requirements of another Federal order and from which during the month a greater volume of fluid milk products, except filled milk, was disposed of as route disposition in such other marketing area and to pool plants qualified on the basis of route disposition in such other marketing area than was so disposed of in this marketing area except that if such plant was subject to all the provisions of this part in the immediately preceding month, it

shall continue to be subject to all the provisions of this part until the third consecutive month in which a greater proportion of its fluid product disposition, except filled milk, is made in the above described manner in such other marketing area, unless, notwithstanding the provisions of this subparagraph, it is regulated under such other order;

(5) A distributing plant qualified pursuant to paragraph (a) of this section which also meets the pooling requirements of another Federal order and from which during the month a greater volume of fluid milk products, except filled milk, was disposed of as route disposition in this marketing area and to pool plants qualified on the basis of route disposition in this marketing area than was so disposed of in such other Federal order marketing area but which plant is, nevertheless, fully regulated under such other Federal order;

(6) A supply plant meeting the pooling requirements of paragraph (b) of this section which also meets the pooling requirements of another Federal order, and which has greater direct marketing area route disposition, except filled milk, and qualifying shipments to plants regulated under such other order than are made under this order, unless during any month of February through August automatic pool plant status for such plant is retained under this part for such month; and

(7) A supply plant which would be subject to the classification and pricing provisions of another order issued pursuant to the Act, unless such plant also qualified as a pool plant pursuant to paragraph (c) of this section.

§ 1064.8 Nonpool plant.

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

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

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

(c) "Partially regulated distributing plant" means a nonpool plant (except the plant of a handler pursuant to § 1064.9(h), an other order plant, or a producer-handler plant) from which there is route disposition in consumer-type packages or dispenser units in the marketing area during the month.

(d) "Unregulated supply plant" means a nonpool plant which is not an other order plant, a producer-handler plant, or a plant of a handler pursuant to § 1064.9(h) from which a fluid milk product is shipped during the month to a pool plant.

§ 1064.9 Handler.

"Handler" means:

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

(b) Any cooperative association with respect to producer milk which it causes to be diverted pursuant to § 1064.13 for the account of such cooperative association;

(c) Any cooperative association with respect to the milk of its producers which is received by the cooperative from the farm for delivery to the pool plant of another handler in a tank truck owned or operated by or under contract to such cooperative association if the cooperative association, prior to delivery, notifies the market administrator in writing that it will be the handler for the milk. Such milk shall be considered to have been received at the location of the pool plant to which delivery is made;

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

(e) A producer-handler;

(f) Any person who operates an other order plant that is either a distributing plant or a supply plant;

(g) Any person who operates an unregulated supply plant; and

(h) A State educational institution which operates either a nonpool distributing plant or supply plant.

§ 1064.10 Producer-handler.

"Producer-handler" means a person who operates both a dairy farm and a distributing plant at which each of the following conditions is met during the month:

(a) Milk is received from the dairy farm of such person but from no other dairy farm;

(b) The butterfat or skim milk disposed of in the form of a fluid milk product does not exceed the butterfat or skim milk, respectively, received in the form of milk from the dairy farm of such person and in the form of a fluid milk product from pool plants of other handlers; and

(c) Such person shall furnish proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary for the production of milk in his name and the operation of the processing and packaging business are the personal enterprise and risk of such person.

§ 1064.11 [Reserved]

§ 1064.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk in compliance with Grade A inspection requirements of a duly constituted health authority, which milk is received at a pool plant or diverted pursuant to § 1064.13.

(b) "Producer" shall not include:

(1) A producer-handler as defined in any order (including this part) issued pursuant to the Act or a handler pursuant to § 1064.9(h);

(2) Any person with respect to milk produced by him which is diverted to a pool plant from an other order plant if the other order designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to § 1064.44(a)(8)(iii) and the corresponding step of § 1064.44(b); and

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

§ 1064.13 Producer milk.

"Producer milk" means the skim milk and butterfat contained in Grade A milk of a producer which is:

(a) Received at a pool plant directly from a producer or a handler described in § 1064.9(c);

(b) Received by a handler described in § 1064.9(c) from producers in excess of the quantity delivered to pool plants; or

(c) Diverted, subject to the following conditions, from a pool plant to a pool supply plant or to a nonpool plant that is not a producer-handler plant. "Diverted milk" is milk normally received at a pool distributing plant but which is moved directly from a dairy farm to a nonpool plant as specified in this paragraph or to a pool supply plant for the account of a handler operating a pool distributing plant or a handler described in § 1064.9(b). Such milk shall be deemed to have been received by the diverting handler at the location of the pool plant from which diverted except that milk diverted to a plant located more than 125 miles by the shortest highway distance as determined by the market administrator from the nearest of the City Halls of Kansas City, Mo., or Topeka, Kans., shall be deemed to have been received at the location of the plant to which diverted in applying §§ 1064.52 and 1064.75:

(1) A handler described in § 1064.9(b) may divert for its account the milk of any member producer whose milk is received at a pool distributing plant for at least 1 day's delivery during the month, without limit during the other days of the month. The total quantity of milk so diverted may not exceed the larger of the following amounts:

(i) The total quantity of its member producer milk received at all pool distributing plants during the current month, or

(ii) The average daily quantity of its member producer milk received at pool distributing plants during the previous month, multiplied by the number of days in the current month.

(2) A handler operating a pool distributing plant may divert for his account the milk of any producer, other than a member of a cooperative association which has diverted milk pursuant to paragraph (c)(1) of this section, whose milk is received at his pool distributing plant for at least 1 day's delivery during the month, without limit during the other days of the month. However, the total quantity of milk so diverted may not exceed the larger of the following amounts:

(i) The total quantity of milk received at such plant during the current

month from producers who are not members of a cooperative association that has diverted milk pursuant to paragraph (c) (1) of this section; or

(ii) The average daily quantity of milk received at such plant during the previous month from producers who are not members of a cooperative association that has diverted milk in the current month pursuant to paragraph (c) (1) of this section, multiplied by the number of days in the current month.

(3) Diversions in excess of the applicable percentages pursuant to paragraph (c) (1) and (2) of this section shall first be assigned to diversions to nonpool plants and any excess quantity assigned to nonpool plants shall not be producer milk and shall not be deemed to have been received by the diverting handler. The diverting handler shall specify the dairy farmers whose milk shall not be included as producer milk pursuant to this subparagraph. Excess diversions to a pool supply plant shall be producer milk at the supply plant in applying §§ 1064.7, 1064.52, and 1064.75.

§ 1064.14 Other source milk.

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

(a) Receipts of fluid milk products and bulk products specified in § 1064.40(b) (1) from any source other than producers, handlers described in § 1064.9 (c), or pool plants;

(b) Receipts in packaged form from other plants of products specified in § 1064.40(b) (1);

(c) Products (other than fluid milk products, products specified in § 1064.40 (b) (1), and products produced at the plant during the same month) from any source which are reprocessed, converted into, or combined with another product in the plant during the month; and

(d) Receipts of any milk product (other than a fluid milk product or a product specified in § 1064.40(b) (1)) for which the handler fails to establish a disposition.

§ 1064.15 Fluid milk product.

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

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

(2) Any milk product not specified in paragraph (a) (1) of this section or in § 1064.40 (b) or (c) (1) (i) through (v) if it contains by weight at least 80 percent water and 6.5 percent nonfat milk solids and less than 9 percent butterfat and 20 percent total solids.

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

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

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

§ 1064.16 Fluid cream product.

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

§ 1064.17 Filled milk.

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

§ 1064.18 Cooperative association.

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

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

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

HANDLER REPORTS

§ 1064.30 Reports of receipts and utilization.

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

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

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

(2) Receipts of milk from handlers described in § 1064.9(c);

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

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1064.40(b) (1); and

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

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

(c) Each handler described in § 1064.9 (b) and (c) shall report:

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

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

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

§ 1064.31 Payroll reports.

(a) On or before the 23d day after the end of each month, each handler described in § 1064.9 (a), (b), and (c) shall report to the market administrator his producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer:

(1) His name and address;

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

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

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

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1064.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1064.32 Other reports.

In addition to the reports required pursuant to §§ 1064.30 and 1064.31, the following shall be reported to the market administrator:

(a) On or before the seventh day after the end of each month with respect to receipts at each plant of milk from each producer, each handler described in § 1064.9 (a) and (b) shall report the average butterfat test, the pounds of butterfat contained therein, the number of days on which milk was received from such producer and for each of the months of February through July, the pounds of base and excess milk received from each producer;

(b) On or before the seventh day after the end of each month of February through July, each handler described in § 1064.9(c) shall report the quantities of

skim milk and butterfat in producer milk for which it is the handler that is base milk and excess milk; and

(c) Each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligation under the order.

CLASSIFICATION OF MILK

§ 1064.40 Classes of utilization.

Except as provided in § 1064.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1064.30 shall be classified as follows:

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

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

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

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

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

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

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

(4) Used to produce:

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

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

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

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

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

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

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

(1) Used to produce:

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

(ii) Butter;

(iii) Any milk product in dry form;

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

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

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

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

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

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

(5) In skim milk in any modified fluid milk product that is in excess of the quantity of skim milk in such product that was included within the fluid milk product definition pursuant to § 1064.15; and

(6) In shrinkage assigned pursuant to § 1064.41(a) to the receipts specified in § 1064.41(a)(2) and in shrinkage specified in § 1064.41 (b) and (c).

§ 1064.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1064.30, the market administrator shall determine the following:

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

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

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

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

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant and milk received from a handler described in § 1064.9(c));

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1064.9(c) and in milk diverted to such plant from another pool plant, except that, in either case, if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be 2 percent;

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

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

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

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

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

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1064.9 (b) or (c), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

§ 1064.42 Classification of transfers and diversions.

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

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant or divertee-plant after the computations pursuant to § 1064.44 (a) (12) and the corresponding step of § 1064.44(b);

(2) If the transferor-plant or divertor-plant received during the month other source milk to be allocated pursuant to § 1064.44(a) (7) or the corresponding step of § 1064.44(b), the skim

milk or butterfat so transferred or diverted shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor-handler or divertor-handler received during the month other source milk to be allocated pursuant to § 1064.44(a) (11) or (12) or the corresponding steps of § 1064.44(b), the skim milk or butterfat so transferred or diverted, up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant or divertee-plant.

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

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

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

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

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

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

(6) If the form in which any fluid milk product that is transferred to an other order plant is not defined as a fluid milk product under such other order, classification under this paragraph shall be in accordance with the provisions of § 1064.40.

(c) *Transfers to producer-handlers and transfers and diversions to a State educational institution plant.* Skim milk or butterfat in the following forms that is transferred from a pool plant to a producer-handler under this or any other Federal order or transferred or diverted from a pool plant to a plant of a handler described in § 1064.9(h) shall be classified:

(1) As Class I milk, if so moved in the form of a fluid milk product, except that if a handler described in § 1064.9(h) certifies that the fluid milk product is acquired for use in Class II or Class III products for research or educational purposes, such fluid milk product shall be classified in the applicable lower class; and

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

(d) *Transfers and diversions to other nonpool plants.* Skim milk or butterfat transferred or diverted in the following forms from a pool plant to a nonpool plant that is not an other order plant, a producer-handler plant, or a plant of a handler pursuant to § 1064.9(h) shall be classified:

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

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

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

(*a*) The transferor-handler or divertor-handler claims such classification in his report of receipts and utilization filed pursuant to § 1064.30 for the month within which such transaction occurred; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 1064.43 General classification rules.

In determining the classification of producer milk pursuant to § 1064.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1064.30 and shall compute separately for each pool plant and for each cooperative association with respect to milk for which it is the handler pursuant to § 1064.9 (b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1064.40, 1064.41, and 1064.42;

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

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1064.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1064.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1064.9(a) for each of his pool plants separately and of each handler described in § 1064.9 (b) and (c) by allocating the handler's receipts of skim milk and butterfat to his utilization as follows:

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

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1064.41(b);

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

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

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

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

(4) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 1064.40(b) (1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(5) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1064.40(b) (1) that were in inventory at the beginning of the month in packaged form, but not in excess of the pounds of skim milk remaining in Class II. This subparagraph shall apply only if the pool plant was subject to the provisions of this subparagraph or comparable provisions of another Federal milk order in the immediately preceding month;

(6) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or a fluid cream product) that is used to produce, or added to, any product specified in § 1064.40(b), but not in excess of the pounds of skim milk remaining in Class II;

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

(i) Other source milk (except that received in the form of a fluid milk product) and, if paragraph (a) (5) of this section applies, packaged inventory at the beginning of the month of products specified in § 1064.40(b) (1) that was not subtracted pursuant to paragraph (a) (4), (5), and (6) of this section;

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

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

(iv) Receipts of fluid milk products from a producer-handler as defined under this or any other Federal milk order and from a handler described in § 1064.9(h);

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

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

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

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

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

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

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

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

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

(9) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 1064.40(b) (1) in inventory at the beginning of the month that were not subtracted pursuant to paragraph (a) (5) and (7) (i) of this section;

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

(11) Subject to the provisions of paragraph (a) (11) (i) and (ii) of this section, subtract from the pounds of skim milk remaining in each class at the plant, pro rata to the total pounds of skim milk remaining in Class I and in Class II and

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

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

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

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

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

(a) The estimated utilization of skim milk of all handlers in each class as announced for the month pursuant to § 1064.45(a); or

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

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

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

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

(13) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products and bulk fluid cream products from another pool plant according to the classification of such products pursuant to § 1064.42(a); and

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

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

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

§ 1064.45 Market administrator's reports and announcements concerning classification.

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

(a) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1064.44(a)(12) and the corresponding step of § 1064.44(b), estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose.

(b) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from an other order plant, the class to which such receipts are allocated pursuant to § 1064.44 on the basis of such report, and, thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

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

(d) On or before the 14th day after the end of each month, report to each cooperative association which so requests the amount and class utilization of milk received by each handler from such cooperative association in its capacity as a handler described in § 1064.9(c) and directly from members of such cooperative association. For the purpose of this report, the milk so received shall be prorated to each class in proportion to the utilization by such handler in each class remaining after the allocation pursuant to § 1064.44(a)(1) through (13) and the corresponding steps of § 1064.44(b).

Class Prices

§ 1064.50 Class prices.

Subject to the provisions of § 1064.52, the class prices for the month per hun-

dredweight of milk containing 3.5 percent butterfat shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $1.74.

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

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

§ 1064.51 Basic formula price.

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

§ 1064.52 Plant location adjustments for handlers.

(a) For milk received from producers at a pool plant located outside the marketing area and more than 50 miles but not more than 70 miles by shortest highway distance as measured by the market administrator, from the nearer of the City Halls in Kansas City, Mo., or Topeka, Kans., which is classified as Class I milk or assigned Class I location adjustment credit pursuant to paragraph (b) of this section, the price computed pursuant to § 1064.50(a) shall be reduced by 10 cents, and by an additional 1.5 cents for each 10 miles or fraction thereof that such plant is more than 70 miles from such City Hall.

(b) For purposes of calculating such adjustment, bulk transfers between pool plants shall be assigned to the Class I disposition at the transferee-plant prorated with the sum of receipts at such plant of producer milk and the pounds assigned as Class I to receipts from other order plants and unregulated supply plants.

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

§ 1064.53 Announcement of class prices.

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

§ 1064.54 Equivalent price.

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

UNIFORM PRICES

§ 1064.60 Handler's value of milk for computing uniform price.

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler with respect to each of his pool plants and of each handler described in § 1064.9 (b) and (c) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1064.44 by the applicable class prices and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1064.44(a)(14) and the corresponding step of § 1064.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1064.74, that are applicable at the location of the pool plant;

(c) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the pool plant or the Class II price, as the case may be, for the current month by the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1064.44(a)(9) and the corresponding step of § 1064.44(b);

(d) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1064.44(a)(7) (i) through (iv) and the corresponding step of § 1064.44(b), excluding receipts of bulk fluid cream products from an other order plant;

(e) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the transferor-plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1064.44(a)(7) (v) and (vi) and the corresponding step of § 1064.44 (b); and

(f) Add the amount obtained from multiplying the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1064.44 (a)(11) and the corresponding step of § 1064.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

§ 1064.61 Computation of uniform price (including weighted average price and base and excess prices).

(a) For each month the market administrator shall compute the "uniform price" per hundredweight of milk of 3.5 percent butterfat content received from producers (or "weighted average price") as follows:

(1) Combine into one total the values computed pursuant to § 1064.60 for all handlers who filed the reports prescribed by § 1064.30 for the month and who made the payments pursuant to §§ 1064.71 and 1064.73 for the preceding month;

(2) Add an amount equal to the total value of the location adjustments computed pursuant to § 1064.75;

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

(4) Subtract an amount computed by multiplying the total hundredweight of producer milk included pursuant to paragraph (a)(1) of this section by 5 cents;

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

(i) The total hundredweight of producer milk; and

(ii) The total hundredweight for which a value is computed pursuant to § 1064.60(f); and

(6) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the "weighted average price" and for the months of August through January shall be the "uniform price" for milk received from producers.

(b) For each month of February through July, the market administrator shall compute the uniform prices per hundredweight for base milk and for excess milk as follows:

(1) Subtract from the amount resulting from the computations made pursuant to paragraph (a) (1) through (4) of this section an amount computed by multiplying the weighted average price plus 5 cents times the hundredweight of milk specified in paragraph (a)(5)(ii) of this section;

(2) Determine the value of excess milk by multiplying the hundredweight of producer milk determined to be excess milk in series beginning with Class III by the respective class prices minus 5 cents and adding together the resulting amounts;

(3) Divide the total value of excess milk obtained in paragraph (b)(2) of this section by the total hundredweight of such milk and adjust to the nearest cent. The resulting figure shall be the uniform price for excess milk of 3.5 percent butterfat content received from producers;

(4) Subtract the value of excess milk obtained in paragraph (b)(2) of this section from the aggregate value of milk obtained in paragraph (b)(1) of this section and adjust by any amount involved in adjusting the uniform price of excess milk to the nearest cent;

(5) Divide the amount obtained in paragraph (b)(4) of this section by the total hundredweight of producer milk determined to be base milk; and

(6) Subtract not less than 4 cents nor more than 5 cents from the amount computed pursuant to paragraph (b)(5) of this section. The resulting figure shall be the uniform price for base milk of 3.5 percent butterfat content received from producers.

§ 1064.62 Announcement of uniform prices and butterfat differential.

The market administrator shall announce publicly on or before:

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

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

PAYMENTS FOR MILK

§ 1064.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all funds received pursuant to paragraph (a) of this section and out of which he shall make all payments required pursuant to paragraph (b) of this section.

(a) Payments made by handlers pursuant to §§ 1064.71, 1064.76, and 1064.77.

(b) Payments due handlers pursuant to §§ 1064.72 and 1064.77: *Provided*, That payments due any handler shall be offset by payments due from such handler pursuant to §§ 1064.71, 1064.76, 1064.77, 1064.85, and 1064.86.

§ 1064.71 Payments to the producer-settlement fund.

(a) On or before the 14th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the amount specified in paragraph (a)(1) of this section exceeds the amount specified in paragraph (a)(2) of this section:

(1) The total value of milk of the handler for such month as determined pursuant to § 1064.60.

(2) The sum of:

(i) The amount required to be paid producers (including payments to producers through cooperative associations) pursuant to § 1064.73 before adjustment for butterfat content and before deductions authorized by the producer or cooperative association or for marketing services pursuant to § 1064.86; and

(ii) The value at the weighted average price applicable at the location of the plant from which received plus 5 cents of other source milk for which a value is computed pursuant to § 1064.60(f).

(b) During each month of February through July each handler pursuant to § 1064.9(c), on or before the 14th day after the end of the month, shall pay to the market administrator the amount, if any, by which the amount specified in paragraph (b)(1) of this section exceeds the amount specified in paragraph (b)(2) of this section:

(1) The total value of such association's member producer milk at the applicable weighted average price computed pursuant to § 1064.61; and

(2) The total value of such association's member producer base and excess milk at the applicable uniform base and excess prices computed pursuant to § 1064.61.

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

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

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

§ 1064.72 Payments from the producer-settlement fund.

On or before the 14th day after the end of each month the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1064.71 (a)(2) or (b)(2) exceeds the amount computed pursuant to § 1064.71 (a)(1) or (b)(1). If at such time the balance in the producer-settlement fund is insufficient to make all payments pursuant to this paragraph, the market administrator shall reduce uniformly such payment and shall complete such payments as soon as the necessary funds are available.

§ 1064.73 Payments to producers and to cooperative associations.

Each handler shall make payment as follows:

(a) On or before the 15th day after the end of each month during which the milk was received, to each producer for whom payment is not made pursuant to paragraph (c) or (d) of this section, at not less than the applicable uniform price(s) pursuant to § 1064.61, adjusted by the butterfat differential computed pursuant to § 1064.74 and the location adjustment to producers pursuant to § 1064.75, and less the following amounts: (1) the payments made pursuant to paragraph (b) of this section, (2) deductions for marketing services made pursuant to § 1064.86, and (3) any deductions authorized by the producer: *Provided*, That if by such date such handler has not received full payment for such month pursuant to § 1064.72 he may reduce his total payment to all producers uniformly by not less than the amount of reduction in payment from the market administrator; the handler shall, however, complete such payments not later than the date for making such payments pursuant to this paragraph next following receipt of the balance from the market administrator.

(b) On or before the 25th day of each month to each producer (1) for whom payment is not received from the handler by a cooperative association pursuant to paragraphs (c) and (d) of this section; and (2) who had not discontinued shipping milk to such handler before the 18th day of the month, a partial payment with respect to milk received from such producer during the first 15 days of the month at the approximate value of such milk, not to be less than the Class III price for the preceding month, without deduction for hauling.

(c) To a cooperative association which has filed a written request for such payment with such handler and with respect to producers for whose milk the market administrator determines such cooperative association is authorized to collect payment as follows:

(1) On or before the 20th day of the month, an amount equal to not less than the sum of the individual payments otherwise payable to producers pursuant to paragraph (b) of this section less any deductions authorized in writing by such cooperative association; and

(2) On or before the 14th day after the end of each month an amount equal to not less than the sum of the individual payments otherwise payable to producers pursuant to paragraph (a) of this section, less proper deductions authorized in writing by such cooperative association.

(d) To a cooperative association with respect to milk for which such association is acting in the capacity of a handler pursuant to § 1064.9(c):

(1) On or before the 20th day of the month an amount equal to the rate specified in paragraph (b) of this section times the volume received during the first 15 days of the month; and

(2) On or before the 14th day after the end of each month an amount equal to not less than the value of such milk at the applicable weighted average or uniform price pursuant to § 1064.61(a), as adjusted pursuant to §§ 1064.74 and 1064.75, less payment made pursuant to paragraph (d)(1) of this section.

(e) In making payments to producers pursuant to paragraph (a) of this section, each handler shall furnish each producer with a supporting statement in such form that it may be retained by the producer, which shall show:

(1) The month and the identity of the handler and of the producer;

(2) The pounds per shipment, the total pounds, and the average butterfat test of milk delivered by the producer;

(3) The minimum rate or rates at which payment to the producer is re-

quired under the provisions of §§ 1064.73, 1064.74, and 1064.75;

(4) The rate which is used in making payment, if such rate is other than the applicable minimum rate;

(5) The amount or the rate per hundredweight of each deduction claimed by the handler, including any deduction claimed under paragraph (b) of this section and § 1064.86 together with a description of the respective deductions; and

(6) The net amount of payment to the producer.

(f) Each handler who receives milk from producers, payment for which is to be made to a cooperative association pursuant to paragraph (c) of this section, shall report to such cooperative association with respect to each such producer, on forms approved by the market administrator, as follows:

(1) On or before the 23d day of the month, the total pounds of milk received during the first 15 days of the month; and

(2) On or before the seventh day after the end of the month:

(i) The pounds per shipment, the total pounds of milk and the average butterfat test of milk received from such producer during the month;

(ii) The amount or rate and nature of any deductions; and

(iii) The amount of any payments due such producer pursuant to § 1064.77.

§ 1064.74 Butterfat differential.

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

§ 1064.75 Plant location adjustments for producers and on nonpool milk.

(a) The uniform price pursuant to § 1064.61(a) and the uniform price for base milk pursuant to § 1064.61(b) for producer milk received at a pool plant or diverted from a pool plant shall be reduced according to the location of the pool plant at the rate set forth in § 1064.52, subject to § 1064.13(c).

(b) For purposes of computations pursuant to §§ 1064.71 and 1064.72 the weighted average price shall be adjusted at the rates set forth in § 1064.52 applicable at the location of the nonpool plant from which the milk was received, except that the adjusted weighted average price plus 5 cents shall not be less than the Class III price.

§ 1064.76 Payments by handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant, except a plant described in § 1064.7(d)(3), shall pay on or before the 25th day after the end of the month to the market administrator for the producer-settlement fund the amount computed pursuant to paragraph (a) of this section. If the handler submits pursuant to §§ 1064.30(b) and 1064.31(b) the information necessary for making the computations, such handler may elect to pay in lieu of such payment the amount computed pursuant to paragraph (b) of this section:

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

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

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

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

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

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

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

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

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

(1) Determine the value that would have been computed pursuant to § 1064.60 for the partially regulated distributing plant if the plant had been a pool plant, subject to the following modifications:

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

(ii) Fluid milk products and bulk fluid cream products transferred from the partially regulated distributing plant to a pool plant or an other order plant shall be classified at the partially regulated distributing plant in the class to which allocated at the fully regulated plant. Such transfers shall be allocated to the extent possible to those receipts at the partially regulated distributing plant from pool plants and other order plants that are classified in the corresponding class pursuant to paragraph (b)(1)(i) of this section. Any such transfers remaining after the above allocation which are classified in Class I and for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1064.60 shall be priced at the uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee-plant, with such uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

(iii) If the operator of the partially regulated distributing plant so requests, the value of milk determined pursuant to § 1064.60 for such handler shall include, in lieu of the value of other source milk specified in § 1064.60(f) less the value of such other source milk specified in § 1064.71(a)(2)(ii), a value of milk determined pursuant to § 1064.60 for each nonpool plant that is not an other order plant which serves as a supply plant for such partially regulated distributing plant by making shipments to the partially regulated distributing plant during the month equivalent to the requirements of § 1064.7(b), subject to the following conditions:

(*a*) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1064.30(b) and 1064.31(b) similar reports for each such nonpool supply plant;

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

(*c*) The value of milk determined pursuant to § 1064.60 for such nonpool supply plant shall be determined in the same manner prescribed for computing the obligation of such partially regulated distributing plant; and

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

(i) The gross payments by the operator of such partially regulated distributing plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1064.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated;

(ii) If paragraph (b)(1)(iii) of this section applies, the gross payments by the operator of such nonpool supply plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1064.74, for milk received

at the plant during the month that would have been producer milk if the plant had been fully regulated; and

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

§ 1064.77 Adjustment of accounts.

Whenever audit by the market administrator of any handler's reports, books, records, or accounts discloses errors resulting in moneys due the market administrator or any producer or cooperative association from such handler, the market administrator shall promptly notify such handler of the amount due and payment therefor shall be made within 5 days if such amount is due the market administrator, or on or before the next date for making payments to producers or a cooperative association, if such amount is due them. Whenever such audit discloses errors resulting in moneys due such handler from the market administrator, payment shall be made within 5 days.

§ 1064.78 Charges on overdue accounts.

Any unpaid obligation of a handler pursuant to §§ 1064.71, 1064.73, 1064.77, 1064.85, and 1064.86 shall be increased one-half of 1 percent on the first day of the month next following the due date of such obligation and on the first day of each month thereafter until such obligation is paid.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

§ 1064.85 Assessment for order administration.

As his pro rata share of the expense of administration of the order, each handler shall pay to the market administrator on or before the 12th day after the end of the month 3 cents per hundredweight, or such lesser amount as the Secretary may prescribe, of:

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

(b) Other source milk allocated to Class I pursuant to § 1064.44(a)(7) and (11) and the corresponding steps of § 1064.44(b), except such other source milk that is excluded from the computations pursuant to § 1064.60 (d) and (f); and

(c) Class I milk disposed of from a partially regulated distributing plant (except from a plant described in § 1064.7(d)(3)) as route disposition in the marketing area that exceeds the skim milk and butterfat subtracted pursuant to § 1064.76(a)(2).

§ 1064.86 Deduction for marketing services.

(a) *Deductions.* Except as set forth in paragraph (b) of this section, each handler in making payments to producers other than himself pursuant to § 1064.73(a), shall deduct 6 cents per hundredweight or such lesser amount as the Secretary may prescribe with respect to all milk received by such handler from producers during the month, and shall pay such deductions to the market administrator on or before the 12th day after the end of such month. Such moneys shall be used by the market administrator to verify weights, samples, and tests of milk received from and to provide market information to such producers.

(b) *Deductions with respect to members of a cooperative association.* In the case of producers for whom a cooperative association is actually performing, as determined by the Secretary, the services set forth in paragraph (a) of this section, each handler shall, in lieu of the deductions specified in paragraph (a) of this section, make such deductions from the payments to be made directly to producers pursuant to § 1064.73(a), as are authorized by such producers, and on or before the 12th day after the end of each month, pay over such deductions to the association of which such producers are members, accompanied by a statement showing the amount of the deduction and the quantity of milk for which it was computed for each such producer.

BASE-EXCESS PLAN

§ 1064.90 Base milk and excess milk.

(a) "Base milk" means that producer milk received by a handler from a producer in each month of February through July that is not in excess of such producer's daily base computed pursuant to § 1064.91 multiplied by the number of days of production in the month that such milk was received by the handler.

(b) "Excess milk" means that producer milk received by a handler from a producer in each month of February through July that is in excess of base milk received from such producer in such month and shall include all milk received from a producer for whom no daily base can be computed pursuant to § 1064.91.

§ 1064.91 Computation of daily base for each producer.

The daily base for each producer applicable during each month of February through July, inclusive, shall be determined by the market administrator as follows: Divide the total pounds of milk received by a handler at a pool plant from such producer during the immediately preceding months of September through December by the number of days during such period on which milk was received from such producer or by 90 whichever is greater. In the case of producers delivering milk to a plant which first became a pool plant during or after the end of the base-forming period, the daily average base for each producer at such plant shall be that which would have been calculated for such producers for the entire base-forming period if the handler's plant had been a pool plant during such period.

§ 1064.92 Daily base rules.

(a) Except as provided in paragraph (b) of this section, a daily base shall apply only to milk produced by the producer in whose name such milk was delivered to the handler(s) during the base-forming period.

(b) A producer may transfer his daily base during the period of February through July by notifying the market administrator in writing before the last day of any delivery period that such base is to be transferred to the person named in such notice but under the following conditions only:

(1) In the event of the death or entry into military service of a producer, the entire daily base may be transferred to a member of such producer's immediate family who carries on the dairy operation on the same farm; and

(2) If a base is held jointly and such joint holding is terminated on the basis of written notice to the market administrator from the joint holders the entire daily base may be transferred to one of the joint holders, or divided in accordance with such notice between the former joint holders if they continue dairy operations.

§ 1064.93 Announcement of bases.

On or before February 1 of each year the market administrator shall notify in writing each producer who made deliveries of milk during the previous September through December and the handler receiving milk from such producer of the daily base established by such producer.

ADVERTISING AND PROMOTION PROGRAM

§ 1064.110 Agency.

"Agency" means an agency organized by producers and producers' cooperative associations in such form and with methods of operation specified in this part, which is authorized to expend funds made available pursuant to § 1064.121(b)(1), on approval by the Secretary, for the purposes of establishing or providing for establishment of research and development projects, advertising (excluding brand advertising), sales promotion, educational, and other programs, designed to improve or promote the domestic marketing and consumption of milk and its products. Members of the Agency shall serve without compensation but shall be reimbursed for reasonable expenses incurred in the performance of duties as members of the Agency.

§ 1064.111 Composition of Agency.

Subject to the conditions of paragraph (a) of this section, each cooperative association or combination of cooperative associations, as provided for under § 1064.113(b), is authorized one agency representative for each full 5 percent of the participating member producers (producers who have not requested refunds for the most recent quarter) it represents. Cooperative associations with less than 5 percent of the total participating producers that have elected not to combine pursuant to § 1064.113(b), and participating producers who are not members of cooperatives, are authorized to select from such group of participating producers, in total, pursuant to § 1064.113

(c), one Agency representative for each full 5 percent that such producers constitute of the total participating producers. If such group of producers in total constitutes less than 5 percent but not less than 1 percent of the total participating producers, it shall nevertheless be authorized to select from such group in total one agency representative. For the purpose of the agency's initial organization, all persons defined as producers shall be considered as participating producers.

(a) If any cooperative association or combination of cooperative associations, as provided for under § 1064.113(b), has a majority of the participating producers, representation from such cooperative or group of cooperatives, as the case may be, shall be limited to the minimum number of representatives necessary to constitute a majority of the agency representatives but not less than five.

§ 1064.112 Term of office.

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

§ 1064.113 Selection of Agency members.

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

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

(b) For purposes of this program, cooperative associations may elect to combine their participating memberships and, if the combined total of participating producers of such cooperatives is 5 percent or more of the total participating producers, such cooperatives shall be eligible to select a representative(s) to the Agency under the rules of § 1064.111 and paragraph (a) of this section.

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

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

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

§ 1064.114 Agency operating procedure.

A majority of the Agency members shall constitute a quorum. Any action of the Agency shall require a majority of concurring votes of those present and voting, unless the Agency determines that more than a simple majority shall be required.

§ 1064.115 Powers of the Agency.

The Agency is empowered to:

(a) Administer the terms and provisions of the program within the scope of Agency authority pursuant to § 1064.110;

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

(c) Recommend amendments to the Secretary; and

(d) With the approval of the Secretary, enter into contracts and agreements with persons or organizations as deemed necessary to carry out advertising and promotion programs and projects specified in §§ 1064.110 and 1064.117.

1064.116 Duties of the Agency.

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

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

(b) Develop programs and projects pursuant to §§ 1064.110 and 1064.117;

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

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

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

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

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

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

§ 1064.117 Advertising, research, education, and promotion program.

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

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

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

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

§ 1064.118 Limitation of expenditures by the Agency.

(a) Not more than 5 percent of the funds received by the Agency pursuant to § 1064.121(b)(1) shall be utilized for administrative expense of the Agency.

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

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

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

§ 1064.119 Personal liability.

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

§ 1064.120 Procedure for requesting refunds.

Any producer may apply for refund subject to the applicable conditions set forth in this section.

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

(b) Except as provided in paragraph (c) of this section, the request shall be submitted within the first 15 days of December, March, June, or September

for milk to be marketed during the ensuing calendar quarter beginning on the first day of January, April, July, and October, respectively.

(c) A dairy farmer who first acquires producer status under this part after the 15th day of December, March, June, or September, as the case may be, and prior to the end of the ensuing calendar quarter may, upon application filed with the market administrator pursuant to paragraph (a) of this section, be eligible for refund on all marketings against which an assessment is withheld during such calendar quarter pursuant to § 1064.61(a)(4): *Provided,* That such eligibility for refund shall not apply to a dairy farmer who during the first 15 days of such December, March, June, or September, respectively, was a producer under an order where the same refund notification period applied and such dairy farmer did not appropriately submit refund application during such period. This paragraph also shall be applicable to all producers during the period following the effective date of this amending order to the beginning of the first full calendar quarter for which the opportunity exists for such producers to request refunds pursuant to paragraph (b) of this section.

(d) A dairy farmer who, with respect to any calendar quarter, has appropriately filed request for refund of program assessments on his marketings of milk under another order that provides for an advertising and promotion program will be eligible (on the basis of his request filed under the other order) for refund with respect to his producer milk marketed under this order during such quarter for which deductions were made pursuant to § 1064.61(a)(4).

§ 1064.121 Duties of the market administrator.

Except as specified in § 1064.116, the market administrator, in addition to other duties specified by this part, shall perform all the duties necessary to administer the terms and provisions of the advertising and promotion program including, but not limited to, the following:

(a) Within 30 days after the effective date of this amending order, and annually thereafter, conduct a referendum to determine representation on the Agency pursuant to § 1064.113(c);

(b) Set aside the amounts subtracted under § 1064.61(a)(4) into an advertising and promotion fund, separately accounted for, from which shall be disbursed:

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

(2) Refund to producers the amounts of mandatory checkoff for advertising and promotion programs required under authority of State law applicable to such producers, but not in amounts that exceed a rate of 5 cents per hundredweight on the volume of milk pooled by any such producer for which deductions were made pursuant to § 1064.61(a)(4).

(3) After the end of each calendar quarter, make a refund to each producer who has made application for such refund pursuant to § 1064.120. Such refund shall be computed at the rate of 5 cents per hunderdweight of such producer's milk pooled for which deductions were made pursuant to § 1064.61(a)(4) for such calendar quarter, less the amount of any refund otherwise made to the producer pursuant to paragraph (b)(2) of this section.

(c) Promptly after the effective date of this amending order, and thereafter with respect to new producers, forward to each producer a copy of the provisions of the advertising and promotion program (§§ 1064.110 through 1064.122).

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

§ 1064.122 Liquidation.

In the event that the provisions of this advertising and promotion program are terminated, any remaining uncommitted funds applicable thereto shall revert to the producer-settlement fund of § 1064.70.

PART 1065—MILK IN THE NEBRASKA-WESTERN IOWA MARKETING AREA

Subpart—Order Regulating Handling

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

Subpart—Order Regulating Handling

GENERAL PROVISIONS

§ 1065.1 General provisions.

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

DEFINITIONS

§ 1065.2 Nebraska-Western Iowa marketing area.

The "Nebraska-Western Iowa marketing area" (hereinafter referred to as the "marketing area") means all the territory within the boundaries of the counties and townships listed below, including such territory as is now occupied and as may be occupied in the future by Government (municipal, State or Federal) reservations, installations, institutions, or other similar establishments. Where such establishment is partly within and partly without the designated boundaries, the marketing area shall include the entire area encompassed by such establishment.

(a) *Zone 1.*

IOWA COUNTIES

Fremont. Monona.
Harrison. Mills.
Pottawattamie (only the townships of Boomer, Crescent, Garner, Hardin, Hazel Dell, Kane, Keg Creek, Lake, Lewis, Minden, Neola, Norwalk, Rockford, Silver Creek, Washington, and York.)
Woodbury.

NEBRASKA COUNTIES

Antelope.	Madison.
Boone.	Merrick.
Burt.	Nance.
Butler.	Nemaha.
Cass.	Nuckolls.
Cedar.	Otoe.
Clay.	Pierce.
Colfax.	Platte.
Cuming.	Polk.
Dakota.	Saline.
Dixon.	Sarpy.
Dodge.	Saunders.
Douglas.	Seward.
Fillmore.	Stanton.
Gage.	Thayer.
Hamilton.	Thurston.
Jefferson.	Washington.
Johnson.	Wayne.
Knox.	York.
Lancaster.	

SOUTH DAKOTA

That portion of Union County comprising Jefferson Township, North Sioux City, and the unorganized territory adjacent thereto, as defined and mapped in the United States 1960 Census of Population.

(b) *Zone 2.*

IOWA COUNTIES

Cass.	Sac.
Cherokee.	Shelby.
Crawford.	Sioux.
Ida.	Pottawattamie (that portion not otherwise included in Zone 1).
Montgomery.	
O'Brien.	
Page.	
Plymouth.	

(c) *Zone 3.*

NEBRASKA COUNTIES

Adams.	Harlan.
Banner.	Howard.
Box Butte.	Kearney.
Buffalo.	Keith.
Cheyenne.	Kimball.
Custer.	Lincoln.
Dawes.	Morrill.
Dawson.	Phelps.
Deuel.	Red Willow.
Franklin.	Scotts Bluff.
Frontier.	Sheridan.
Furnas.	Sherman.
Garden.	Sioux.
Gosper.	Valley.
Greeley.	Webster.
Hall.	

§ 1065.3 Route disposition.

"Route disposition" means a delivery (including delivery by a vendor or through a distribution point, or sale from a plant store) of a fluid milk product classified as Class I to retail or wholesale outlets other than a delivery in bulk to a milk plant.

§ 1065.4 [Reserved]

§ 1065.5 Distributing plant.

"Distributing plant" means a plant which is approved by a duly constituted health authority for the processing or packaging of Grade A milk and from which there is route disposition of any fluid milk product during the month in the marketing area.

§ 1065.6 Supply plant.

"Supply plant" means a plant from which milk or skim milk acceptable to a duly constituted health authority for distribution in the marketing area as Grade A milk, is shipped during the month to a pool plant qualified pursuant to § 1065.7.

§ 1065.7 Pool plant.

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

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

(1) Route disposition, except filled milk, in the marketing area equal to not less than 15 percent of the Grade A milk received at such plant from dairy farmers, supply plants (exclusive of plants qualifying as pool plants pursuant to this paragraph), and handlers described in § 1065.9(c); and

(2) Total route disposition, except filled milk, equal to not less than 35 percent of the Grade A milk received at the plant from the sources specified in paragraph (a)(1) of this section.

(b) A supply plant from which the volume of fluid milk products, except filled milk, shipped during the month to pool plants qualified pursuant to paragraph (a) of this section is not less than 50 percent of the Grade A milk received at such plant from dairy farmers and handlers described in § 1065.9(c) during such month. A supply plant that qualifies as a pool plant in each of the immediately preceding months of August through December shall be a pool plant for the succeeding months of January through July, unless the plant operator requests the market administrator, in writing, that such plant not be a pool plant, such nonpool plant status to be effective the first month following such notice and thereafter until the plant again qualifies as a pool plant on the basis of shipments.

(c) A supply plant operated by a cooperative association if, during the month, 51 percent or more of the producer milk of members of the association is received at a pool distributing plant(s) of another handler(s), or is transferred to such plant(s) from the association's supply plant.

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

(1) A producer-handler plant;

(2) A plant qualified pursuant to paragraph (a) of this section from which a lesser volume of fluid milk products (not including filled milk) is disposed of in the Nebraska-Western Iowa marketing area than in the marketing area of another marketing agreement or order issued pursuant to the Act and which is fully subject to the classification and pricing provisions of such other agreement or order;

(3) Any plant qualified pursuant to paragraph (b) of this section for any portion of the period of January through July, inclusive, that producer milk at such plant is subject to the classification and pricing provisions of another order issued pursuant to the Act; and

(4) That portion of a plant that is physically apart from the Grade A portion of such plant, is operated separately and is not approved by a duly constituted health authority for the receiving, processing, or packaging of any fluid milk product for Grade A disposition.

§ 1065.8 Nonpool plant.

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

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

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

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

(d) "Unregulated supply plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant from which fluid milk products are shipped during the month to a pool plant.

§ 1065.9 Handler.

"Handler" means:

(a) Any person who operates a pool plant. In case a corporation with recognized divisions which are operated as separate business units operates two or more pool plants, each such division shall be the handler with respect to the pool plant(s) it operates;

(b) Any cooperative association with respect to milk of its member producers which is diverted pursuant to § 1065.13 for the account of such association;

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

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

(e) A producer-handler; and

(f) Any person who operates an other order plant described in § 1065.7(d).

§ 1065.10 Producer-handler.

"Producer-handler" means any person who is both a dairy farmer and the operator of a distributing plant, and who meets all of the following conditions:

(a) Receipts of fluid milk products at his plant are solely milk of his own production and fluid milk products from pool plants of other handlers;

(b) Receives no milk products other than fluid milk products for reconstituting into fluid milk products; and

(c) The maintenance, care, and management of the dairy animals and other resources necessary to produce the milk, and the processing, packaging, and distribution of the milk (including filled milk) are the personal enterprise and the personal risk of such person.

§ 1065.11 [Reserved]

§ 1065.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk in compliance with the Grade A inspection requirements of a duly constituted health authority and whose milk is received at a pool plant or by a handler described in § 1065.9(c) or is diverted as producer milk pursuant to § 1065.13.

(b) "Producer" shall not include:

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

(2) Any person with respect to milk produced by him which is diverted to a pool plant from an other order plant if the other order designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to § 1065.44 (a) (8) (iii) and the corresponding step of § 1065.44(b); and

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

§ 1065.13 Producer milk.

"Producer milk" of each handler means all skim milk and butterfat contained in milk from producers that is:

(a) Received from producers at a pool plant;

(b) Received from producers by a cooperative association handler described in § 1065.9(c);

(c) Diverted from a pool plant to a nonpool plant that is not a producer-handler plant pursuant to paragraph (c) (1) or (2) of this section, subject to the conditions set forth in paragraph (c) (3) and (4) of this section;

(1) A cooperative association handler described in § 1065.9(b) may divert for its account the milk of any member-producer if at least 2 days' production of such producer is received at a pool plant(s) during the month. The total quantity of milk so diverted by the cooperative association handler shall not exceed, in each of the months of January, February, March, September, October, and November, 30 percent, and in any other month 40 percent, of the larger of:

(i) The total quantity of milk of member-producers received at all pool plants during the current month; or

(ii) The average daily quantity of milk of member-producers received at all pool plants during the immediately preceding month, multiplied by the number of days in the current month;

(2) A handler, other than a cooperative association, in his capacity as the operator of a pool plant, may divert for his account the milk of any producer other than a member of a cooperative association, if at least 2 days' production of such producer is received at the handler's pool plant(s) during the month. The total quantity of milk so diverted by the handler shall not exceed, in each of the months of January, February, March, September, October, and November, 30 percent, and in any other month 40 percent, of the larger of:

(i) The total quantity of milk of producers received at his pool plant(s) during the current month exclusive of milk received from producers who are members of a cooperative association; or

(ii) The average daily quantity of milk of producers received at his pool plant(s) during the immediately preceding month, exclusive of milk received from producers who are members of a cooperative association, multiplied by the number of days in the current month;

(3) In the event the quantity of milk diverted is in excess of the applicable quantity specified in paragraph (c) (1) and (2) of this section, the diverting handler shall designate the dairy farmers whose milk was overdiverted. If the handler fails to make such designation, no milk diverted by him shall be producer milk for such month; and

(4) For the purposes of location adjustments pursuant to §§ 1065.52 and 1065.75, milk so diverted shall be priced at the location of the plant to which diverted.

§ 1065.14 Other source milk.

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

(a) Receipts of fluid milk products and bulk products specified in § 1065.40(b) (1) from any source other than producers, handlers described in § 1065.9(c), or pool plants;

(b) Receipts in packaged form from other plants of products specified in § 1065.40(b) (1);

(c) Products (other than fluid milk products, products specified in § 1065.40 (b) (1), and products produced at the plant during the same month) from any source which are reprocessed, converted into, or combined with another product in the plant during the month; and

(d) Receipts of any milk product (other than a fluid milk product or a product specified in § 1065.40(b) (1)) for which the handler fails to establish a disposition.

§ 1065.15 Fluid milk product.

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

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

(2) Any milk product not specified in paragraph (a) (1) of this section or in § 1065.40(b) or (c) (1) (i) through (iv) if it contains by weight at least 80 percent water and 6.5 percent nonfat milk solids and less than 9 percent butterfat and 20 percent total solids.

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

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

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

§ 1065.16 Fluid cream product.

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

§ 1065.17 Filled milk.

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

§ 1065.18 Cooperative association.

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

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

(b) Has full authority in the sale of milk of its members and is engaged in making collective sales of, or marketing, milk or its products for its members; and

(c) Has its entire activities under the control of its members.

HANDLER REPORTS

§ 1065.30 Reports of receipts and utilization.

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

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

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

(2) Receipts of milk from handlers described in § 1065.9(c);

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

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1065.40(b)(1); and

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

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

(c) Each handler described in § 1065.9(b) and (c) shall report:

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

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

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

§ 1065.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1065.9 (a), (b), and (c) shall report to the market administrator his producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer:

(1) His name and address;

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

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

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

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1065.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1065.32 Other reports.

In addition to the reports required pursuant to §§ 1065.30 and 1065.31, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligation under the order.

Classification of Milk

§ 1065.40 Classes of utilization.

Except as provided in § 1065.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1065.30 shall be classified as follows:

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

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

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

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

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

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

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

(4) Used to produce:

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

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

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

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

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

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

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

(1) Used to produce:

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

(ii) Butter;

(iii) Any milk product in dry form;

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

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

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

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

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

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

(5) In skim milk in any modified fluid milk product that is in excess of the quantity of skim milk in such product that was included within the fluid milk product definition pursuant to § 1065.15; and

(6) In shrinkage assigned pursuant to § 1065.41(a) to the receipts specified in § 1065.41(a)(2) and in shrinkage specified in § 1065.41(b) and (c).

§ 1065.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1065.30, the market administrator shall determine the following:

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

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

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

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

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

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1065.9(c), except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be 2 percent;

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

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

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from

other order plants, excluding the quantity for which Class II or Class III classification is requested by the operators of both plants;

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

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

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1065.9 (b) or (c), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

§ 1065.42 Classification of transfers and diversions.

(a) *Transfers to pool plants.* Skim milk or butterfat transferred in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant or by a handler described in § 1065.9(c) to another handler's pool plant shall be classified as follows:

(1) Such transfers from a pool plant shall be classified as Class I milk unless the operators of both plants request the same classification in another class. In either case, the classification of such transfers shall be subject to the following conditions:

(i) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant after the computations pursuant to § 1065.44(a)(12) and the corresponding step of § 1065.44(b);

(ii) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1065.44(a)(7) or the corresponding step of § 1065.44(b), the skim milk or butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(iii) If the transferor-handler received during the month other source milk to be allocated pursuant to § 1065.44(a) (11) or (12) or the corresponding steps of § 1055.44(b), the skim milk or butterfat so transferred, up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant; and

(2) Such transfers by a handler described in § 1065.9(c) shall be classified pro rata to the respective quantities of skim milk and butterfat remaining in each class after the computations pursuant to § 1065.44(a)(13)(i) and the corresponding step of § 1065.44(b).

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

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

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

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

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

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

(6) If the form in which any fluid milk product that is transferred to an other order plant is not defined as a fluid milk product under such other order, classification under this paragraph shall be in accordance with the provisions of § 1065.40.

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

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

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

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

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

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

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

(*a*) The transferor-handler or divertor-handler claims such classification in his report of receipts and utilization filed pursuant to § 1065.30 for the month within which such transaction occurred; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 1065.43 General classification rules.

In determining the classification of producer milk pursuant to § 1065.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1065.30 and shall compute separately for each pool plant and for each cooperative association with respect to milk for which it is the handler pursuant to § 1065.9 (b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1065.40, 1065.41, and 1065.42;

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

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1065.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1065.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1065.9(a) for each of his pool plants separately and of each handler described in § 1065.9 (b) and (c) by allocating the handler's receipts of skim milk and butterfat to his utilization as follows:

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

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1065.41 (b);

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

(3) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid 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 § 1065.40(b) (1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(5) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1065.40(b) (1) that were in inventory at the beginning of the month in packaged form, but not in excess of the pounds of skim milk remaining in Class II. This subparagraph shall apply only if the pool plant was subject to the provisions of this subparagraph or comparable provisions of another Federal milk order in the immediately preceding month;

(6) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or a fluid cream product) that is used to produce, or added to, any product specified in § 1065.40(b), but not in excess of the pounds of skim milk remaining in Class II;

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

(i) Other source milk (except that received in the form of a fluid milk product) and, if paragraph (a) (5) of this section applies, packaged inventory at the beginning of the month of products specified in § 1065.40(b) (1) that was not subtracted pursuant to paragraph (a) (4), (5), and (6) of this section;

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

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

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

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

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

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

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

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

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

(b) Subtract from the above result the sum of the pounds of skim milk in receipts at all pool plants of the handler of producer milk, milk from a handler described in § 1065.9(c), fluid milk products from pool plants of other handlers, and bulk fluid milk products from other order plants that were not subtracted pursuant to paragraph (a)(7)(vi) of this section; and

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

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

(9) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 1065.40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to paragraph (a)(5) and (7)(i) of this section;

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

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

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

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

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

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

(a) The estimated utilization of skim milk of all handlers in each class as announced for the month pursuant to § 1065.45(a); or

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

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

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

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

(13) Subtract in the following order from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products and bulk fluid cream products from:

(i) Another pool plant according to the classification of such products pursuant to § 1065.42(a)(1); and

(ii) A handler described in § 1065.9(c) according to the classification of such products pursuant to § 1065.42(a)(2); and

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

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

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

§ 1065.45 Market administrator's reports and announcements concerning classification.

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

(a) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1065.44(a) (12) and the corresponding step of § 1065.44(b), estimate and publicly announce the utilization (to the nearest whole percentage(in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose.

(b) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from an other order plant, the class to which such receipts are allocated pursuant to § 1065.44 on the basis of such report, and, thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

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

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

CLASS PRICES

§ 1065.50 Class prices.

Subject to the provisions of § 1065.52, the class prices for the month per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $1.60 for pool plants located in Zone 1, plus $1.50 in Zone 2, and plus $1.75 in Zone 3.

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

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

§ 1065.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential (rounded to the nearest one-tenth cent) per one-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.

§ 1065.52 Plant location adjustments for handlers.

(a) For producer milk received at a pool plant (or diverted to a nonpool plant) located outside the marketing area and disposed of as Class I milk or assigned Class I location adjustment credit pursuant to paragraph (b) of this section the Class I price shall be that effective pursuant to § 1065.50(a) at the nearest of the pricing zones as set forth in § 1065.2, subject to a reduction of 1.5 cents for each 10 road miles or fraction thereof that such plant is located more than 100 miles from the nearest of the city halls in Chadron, Grand Island, Lincoln, Norfolk, North Platte, Omaha, and Scottsbluff, all in the State of Nebraska, and Sioux City, Iowa.

(b) For the purpose of calculating such adjustments:

(1) All distances shall be by shortest hard-surfaced highways and/or all-weather roads, as determined by the market administrator; and

(2) Transfers between pool plants shall be assigned Class I disposition at the transferee-plant, in excess of the sum of receipts at such plant from producers and handlers described in § 1065.9 (c), and the volume assigned as Class I to receipts from other order plants and unregulated supply plants, such assignment to be made first to transferor-plants at which no location adjustment credit is applicable and then in sequence beginning with the plant at which the least adjustment would apply.

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

§ 1065.53 Announcement of class prices.

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

§ 1065.54 Equivalent price.

If for any reason a price or pricing constituent required by this part for computing class prices or for other purposes is not available as prescribed in this part, the market administrator shall use a price or pricing constituent determined by the Secretary to be equivalent to the price or pricing constituent that is required.

UNIFORM PRICE

§ 1065.60 Handler's value of milk for computing uniform price.

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler with respect to each of his pool plants and of each handler described in § 1065.9 (b) and (c) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1065.44 by the applicable class prices and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1065.44(a)(14) and the corresponding step of § 1065.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1065.74, that are applicable at the location of the pool plant;

(c) Add the following:

(1) The amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the pool plant for the current month by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1065.44(a)(9) and the corresponding step of § 1065.44(b); and

(2) The amount obtained from multiplying the difference between the Class III price for the preceding month and the Class II price for the current month by the lesser of:

(i) The hundredweight of skim milk and butterfat subtracted from Class II pursuant to § 1065.44(a)(9) and the corresponding step of § 1065.44(b) for the current month; or

(ii) The hundredweight of skim milk and butterfat remaining in Class III after the computations pursuant to § 1065.44(a)(12) and the corresponding step of § 1065.44(b) for the preceding month, less the hundredweight of skim milk and butterfat specified in paragraph (c)(1) of this section;

(d) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1065.44(a)(7) (i) through (iv) and the corresponding step of § 1065.44(b), excluding receipts of bulk fluid cream products from an other order plant;

(e) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the transferor-plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1065.44(a)(7) (v) and (vi) and the corresponding step of § 1065.44 (b); and

(f) Add the amount obtained from multiplying the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1065.44(a)(11) and the corresponding step of § 1065.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers

fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

§ 1065.61 Computation of uniform price.

For each month the market administrator shall compute the uniform price per hundredweight of milk of 3.5 percent butterfat content which is received from producers as follows:

(a) Combine into one total the values computed pursuant to § 1065.60 for all handlers who filed the reports prescribed by § 1065.30 for the month and who made the payments pursuant to §§ 1065.71 and 1065.73 for the preceding month;

(b) Subtract an amount equal to the total value of the plus location adjustments computed pursuant to § 1065.75;

(c) Add an amount equal to the total value of the minus location adjustments computed pursuant to § 1065.75;

(d) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(e) Subtract an amount computed by multiplying the total hundredweight of producer milk included pursuant to paragraph (a)(1) of this section by 5 cents;

(f) Divide the resulting amount by the sum of the following for all handlers included in these computations;

(i) The total hundredweight of producer milk; and

(ii) The total hundredweight for which a value is computed pursuant to § 1065.60(f); and

(g) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the "uniform price" for milk received from producers.

§ 1065.62 Announcement of uniform price and butterfat differential.

The market administrator shall announce publicly on or before:

(a) The fifth day after the end of each month the butterfat differential for such month; and

(b) The 12th day after the end of each month the uniform price for such month.

PAYMENTS FOR MILK

§ 1065.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to §§ 1065.71, 1065.76, and 1065.77, and out of which he shall make all payments pursuant to §§ 1065.72 and 1065.77.

§ 1065.71 Payments to the producer-settlement fund.

(a) On or before the 13th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the amount specified in paragraph (a)(1) of this section exceeds the amount specified in paragraph (a)(2) of this section:

(1) The total value of milk of the handler for such month as determined pursuant to § 1065.60.

(2) The sum of:

(i) The value at the uniform price, as adjusted pursuant to § 1065.75, of such handler's receipts of producer milk; and

(ii) The value at the uniform price applicable at the location of the plant from which received plus 5 cents of other source milk for which a value is computed pursuant to § 1065.60(f).

(b) On or before the 25th day after the end of the month each person who operated an other order plant that was regulated during such month under an order providing for individual-handler pooling shall pay to the market administrator an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk in route disposition from such plant in the marketing area which was allocated to Class I at such plant. If there is such route disposition from such plant in marketing areas regulated by two or more marketwide pool orders, the reconstituted skim milk allocated to Class I shall be prorated to each order according to such route disposition in each marketing area; and

(2) Compute the value of the reconstituted skim milk assigned in paragraph (b)(1) of this section to route disposition in this marketing area by multiplying the quantity of such skim milk by the difference between the Class I price under this part that is applicable at the location of the other order plant (but not to be less than the Class III price) and the Class III price.

§ 1065.72 Payments from the producer-settlement fund.

On or before the 14th day after the end of each month the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1065.71(a)(2) exceeds the amount computed pursuant to § 1065.71(a)(1). The market administrator shall offset any payment due any handler against payments due from such handler.

§ 1065.73 Payments to producers and to cooperative associations.

Each handler shall make payment as follows:

(a) On or before the 15th day after the end of each month during which the milk was received, to each producer for whom payment is not made pursuant to paragraph (c) or (d) of this section, at not less than the uniform price pursuant to § 1065.61, as adjusted pursuant to §§ 1065.74 and 1065.75, and less the following amounts:

(1) The payments made pursuant to paragraph (b) of this section;

(2) Deductions for marketing services pursuant to § 1065.86; and

(3) Any proper deductions authorized by the producer: *Provided*, That, if by such date such handler has not received full payment for such month pursuant to § 1065.72, he may reduce his total payment to all producers uniformly by not more than the amount of reduction in payment from the market administrator; the handler shall, however, complete such payments not later than the date for making such payments pursuant to this paragraph next following receipt of the balance from the market administrator:

(b) On or before the 27th day of each month to each producer:

(1) For whom payment is not received from the handler by a cooperative association pursuant to paragraph (c) or (d) of this section; and

(2) Who had not discontinued shipping milk to such handler, an advance payment with respect to milk received from such producer during the first 15 days of the month an amount per hundredweight not to be less than the uniform price for the preceding month;

(c) To a cooperative association which has filed a written request for such payment with such handler and with respect to producers for whose milk the market administrator determines such cooperative association is authorized to collect payment as follows:

(1) On or before the 26th day of the month, an amount not less than the sum of the individual payments otherwise payable to producers pursuant to paragraph (b) of this section, less any deductions authorized in writing by such cooperative association; and

(2) On or before the 14th day after the end of each month an amount not less than the sum of the individual payments otherwise payable to producers pursuant to paragraph (a) of this section, less proper deductions authorized in writing by such cooperative association;

(d) To a cooperative association with respect to receipts of milk for which such cooperative association is the handler pursuant to § 1065.9(c) as follows:

(1) On or before the 26th day of the month, for milk received during the first 15 days of the month an amount per hundredweight equal to not less than the uniform price for the preceding month; and

(2) On or before the 14th day after the end of each month not less than the value of such milk at the class prices, as adjusted by the butterfat differential specified in § 1065.74, that are applicable at the location of the receiving handler's pool plant, less payment made pursuant to paragraph (d)(1) of this section;

(e) In making payments to producers pursuant to paragraphs (a) and (c) of this section, each handler shall furnish each producer or cooperative association with a supporting statement, in such form that it may be retained by the producer, which shall show:

(1) The month and the identity of the handler and of the producer;

(2) The pounds per shipment, the total pounds, and the average butterfat test of milk delivered by the producer;

(3) The minimum rate at which payment to the producer is required under the provisions of §§ 1065.61, 1065.74, and 1065.75;

(4) The rate which is used in making the payment, if such rate is other than the applicable minimum rate;

(5) The amount or the rate per hundredweight of each deduction claimed

by the handler, including any deduction claimed under paragraph (b) of this section and § 1065.86 together with a description of the respective deductions; and

(6) The net amount of payment to the producer; and

(f) Nothing in this section shall abrogate the right of a cooperative association to make payments to its member producers in accordance with the payment plan of such cooperative association.

§ 1065.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.115 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month.

§ 1065.75 Plant location adjustments for producers and on nonpool milk.

(a) The uniform price computed pursuant to § 1065.61 shall be decreased 10 cents per hundredweight for producer milk received at a pool plant located in Zone 2, and shall be increased 15 cents per hundredweight at pool plants located in Zone 3.

(b) For producer milk received at a pool palnt or diverted to a nonpool plant located outside the marketing area the uniform price shall be that effective at the nearest of the pricing zones as set forth in § 1065.2, subject to a reduction at the rates set forth in § 1065.52.

(c) For purposes of computations pursuant to §§ 1065.71 and 1065.72 the uniform price shall be adjusted at the rates set forth in § 1065.52 applicable at the location of the nonpool plant from which the milk was received, except that the adjusted uniform price plus 5 cents shall not be less than the Class III price.

§ 1065.76 Payments by handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay on or before the 25th day after the end of the month to the market administrator for the producer-settlement fund the amount computed pursuant to paragraph (a) of this section. If the handler submits pursuant to §§ 1065.30(b) and 1065.31(b) the information necessary for making the computations, such handler may elect to pay in lieu of such payment the amount computed pursuant to paragraph (b) of this section:

(a) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the pounds of route disposition in the marketing area from the partially regulated distributing plant;

(2) Subtract the pounds of fluid milk products received at the partially regulated distributing plant:

(i) As Class I milk from pool plants and other order plants, except that subtracted under a similar provision of another Federal milk order; and

(ii) From another nonpool plant that is not an other order plant to the extent that an equivalent amount of fluid milk products disposed of to such nonpool plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract the pounds of reconstituted skim milk in route disposition in the marketing area from the partially regulated distributing plant;

(4) Multiply the remaining pounds by the difference between the Class I price and the uniform price plus 5 cents, both prices to be applicable at the location of the partially regulated distributing plant (except that the Class I price and the uniform price plus 5 cents shall not be less than the Class III price); and

(5) Add the amount obtained from multiplying the pounds of reconstituted skim milk specified in paragraph (a)(3) of this section by the difference between the Class I price applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price) and the Class III price.

(b) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the value that would have been computed pursuant to § 1065.60 for the partially regulated distributing plant if the plant had been a pool plant, subject to the following modifications:

(i) Fluid milk products and bulk fluid cream products received at the partially regulated distributing plant from a pool plant or an other order plant shall be allocated at the partially regulated distributing plant to the same class in which such products were classified at the fully regulated plant;

(ii) Fluid milk products and bulk fluid cream products transferred from the partially regulated distributing plant to a pool plant or an other order plant shall be classified at the partially regulated distributing plant in the class to which allocated at the fully regulated plant. Such transfers shall be allocated to the extent possible to those receipts at the partially regulated distributing plant from pool plants and other order plants that are classified in the corresponding class pursuant to paragraph (b)(1)(i) of this section. Any such transfers remaining after the above allocation which are classified in Class I and for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1065.60 shall be priced at the uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee-plant, with such uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

(iii) If the operator of the partially regulated distributing plant so requests, the value of milk determined pursuant to § 1065.60 for such handler shall include, in lieu of the value of other source milk specified in § 1065.60(f) less the value of such other source milk specified in § 1065.71(a)(2)(ii), a value of milk determined pursuant to § 1065.60 for each nonpool plant that is not an other order plant which serves as a supply plant for such partially regulated distributing plant by making shipments to the partially regulated distributing plant during the month equivalent to the requirements of § 1065.7(b), subject to the following conditions:

(*a*) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1065.30(b) and 1065.31(b) similar reports for each such nonpool supply plant;

(*b*) The operator of such nonpool supply plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for verification purposes; and

(*c*) The value of milk determined pursuant to § 1065.60 for such nonpool supply plant shall be determined in the same manner prescribed for computing the obligation of such partially regulated distributing plant; and

(2) From the partially regulated distributing plant's value of milk computed pursuant to paragraph (b)(1) of this section, subtract:

(i) The gross payments by the operator of such partially regulated distributing plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1065.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated;

(ii) If paragraph (b)(1)(iii) of this section applies, the gross payments by the operator of such nonpool supply plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1065.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated; and

(iii) The payments by the operator of the partially regulated distributing plant to the producer-settlement fund of another order under which such plant is also a partially regulated distributing plant and like payments by the operator of the nonpool supply plant if paragraph (b)(1)(iii) of this section applies.

§ 1065.77 Adjustment of accounts.

Adjustments of accounts shall be made as follows:

(a) Whenever verification by the market administrator of reports or payments of any handler discloses errors made in payments to or from the producer-settlement fund pursuant to §§ 1065.71 and 1065.72, the market administrator shall promptly bill such handler for any unpaid amount and such

handler shall, within 5 days, make payment to the market administrator of the account so billed. Whenever verification discloses that payment is due from the market administrator to any handler, the market administrator shall, within 5 days, make such payment to such handler; and

(b) Whenever verification by the market administrator of the payments by a handler to any producer or cooperative association, discloses payments of less than is required by § 1065.73, the handler shall make up such payment to the producer or cooperative association not later than the time of making payments next following such disclosure.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

§ 1065.85 Assessment for order administration.

As his pro rata share of the expense of administering the order, each handler shall pay to the market administrator on or before the 14th day after the end of the month 3 cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to:

(a) Producer milk (including that classified pursuant to § 1065.42(a)(2)) and such handler's own production;

(b) Other source milk allocated to Class I pursuant to § 1065.44(a) (7) and (11) and the corresponding steps of § 1065.44(b), except such other source milk that is excluded from the computation pursuant to § 1065.60 (d) and (f); and

(c) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the skim milk and butterfat subtracted pursuant to § 1065.76(a)(2).

§ 1065.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler in making payments to each producer pursuant to § 1065.73 shall deduct 6 cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to producer milk received by such handler (except such handler's own farm production) during the month and shall pay such deductions to the market administrator not later than the 15th day after the end of the month. Such money shall be used by the market administrator to verify or establish weights, samples, and tests of producer milk and to provide producers with market information. Such service shall be performed in whole or in part by the market administrator or by an agent engaged by and responsible to him; and

(b) In the case of producers for whom a cooperative association is performing, as determined by the Secretary, the services set forth in paragraph (a) of this section, each handler shall make, in lieu of the deductions specified in paragraph (a) of this section, such deductions as are authorized by such producers and on or before the 15th day after the end of each month, pay over such deductions to the association rendering such services.

ADVERTISING AND PROMOTION PROGRAM

§ 1065.110 Agency.

"Agency" means an agency organized by producers and producers' cooperative associations, in such form and with methods of operation specified in this part, which is authorized to expend funds made available pursuant to § 1065.121(b)(1), on approval by the Secretary, for the purposes of establishing or providing for establishment of research and development projects, advertising (excluding brand advertising), sales promotion, educational, and other programs, designed to improve or promote the domestic marketing and consumption of milk and its products. Members of the Agency shall serve without compensation but shall be reimbursed for reasonable expenses incurred in the performance of duties as members of the Agency.

§ 1065.111 Composition of Agency.

Subject to the conditions of paragraph (a) of this section, each cooperative association or combination of cooperative associations, as provided for under § 1065.113(b), is authorized one agency representative for each full 5 percent of the participating member producers (producers who have not requested refunds for the most recent quarter) it represents. Cooperative associations with less than 5 percent of the total participating producers that have elected not to combine pursuant to § 1065.113(b), and participating producers who are not members of cooperatives, are authorized to select from such group of participating producers, in total, pursuant to § 1065.113(c), one Agency representative for each full 5 percent that such producers constitute of the total participating producers. If such group of producers in total constitutes less than 5 percent but not less than 1 percent of the total participating producers it shall nevertheless be authorized to select from such group in total one agency representative. For the purpose of the agency's initial organization, all persons defined as producers shall be considered as participating producers.

(a) If any cooperative association or combination of cooperative associations, as provided for under § 1065.113(b), has a majority of the participating producers, representation from such cooperative or group of cooperatives, as the case may be, shall be limited to the minimum number of representatives necessary to constitute a majority of the agency representatives, but not less than five.

§ 1065.112 Term of office.

The term of office of each member of the Agency shall be 1 year, or until a replacement is designated by the cooperative association or is otherwise appropriately elected.

§ 1065.113 Selection of Agency members.

The selection of Agency members shall be made pursuant to paragraphs (a), (b), and (c) of this section. Each person selected shall qualify by filing with the market administrator a written acceptance promptly after being notified of such selection.

(a) Each cooperative association authorized one or more representatives to the Agency shall notify the market administrator of the name and address of each representative who shall serve at the pleasure of the cooperative.

(b) For purposes of this program, cooperative associations may elect to combine their participating memberships and, if the combined total of participating producers of such cooperatives is 5 percent or more of the total participating producers, such cooperatives shall be eligible to select a representative(s) to the Agency under the rules of § 1065.111 and paragraph (a) of this section.

(c) Selection of Agency members to represent participating nonmember producers and participating producer members of a cooperative association(s) having less than the required 5 percent of the producers participating in the advertising and promotion program and who have not elected to combine memberships as provided in paragraph (b) of this section, shall be supervised by the market administrator in the following manner:

(1) Promptly after the effective date of this amending order, and annually thereafter, the market administrator shall give notice to participating producer members of such cooperatives and participating nonmember producers of their opportunity to nominate one or more producers as Agency representatives, as the case may be, and also shall specify the number of representatives to be selected.

(2) Following the closing date for nominations, the market administrator shall announce the nominees who are eligible for Agency membership and shall conduct a referendum among the individual participating producers eligible to vote. Election to membership shall be determined on the basis of the nominee (or nominees) receiving the largest number of eligible votes. If an elected representative subsequently discontinues producer status or is otherwise unable to complete his term of office, the market administrator shall appoint as his replacement the participating producer who received the next highest number of eligible votes.

§ 1065.114 Agency operating procedure.

A majority of the Agency members shall constitute a quorum. Any action of the Agency shall require a majority of concurring votes of those present and voting, unless the Agency determines that more than a simple majority shall be required.

§ 1065.115 Powers of the Agency.

The Agency is empowered to:

(a) Administer the terms and provisions of the program within the scope of Agency authority pursuant to § 1065.110;

(b) Make rules and regulations to effectuate the purposes of Public Law 91-670;

(c) Recommend amendments to the Secretary; and

(d) With the approval of the Secretary, enter into contracts and agreements with persons or organizations as deemed necessary to carry out advertising and promotion programs and projects specified in §§ 1065.110 and 1065.117.

§ 1065.116 Duties of the Agency.

The Agency shall perform all duties necessary to carry out the terms and provisions of this program including, but not limited to, the following:

(a) Meet, organize, and select from among its members a chairman and such other officers and committees as may be necessary, and adopt and make public such rules as may be necessary for the conduct of its business;

(b) Develop programs and projects pursuant to §§ 1065.110 and 1065.117;

(c) Keep minutes, books, and records and submit books and records for examination by the Secretary and furnish any information and reports requested by the Secretary;

(d) Prepare and submit to the Secretary for approval prior to each quarterly period a budget showing the projected amounts to be collected during the quarter and how such funds are to be disbursed by the Agency;

(e) When desirable, establish an advisory committee(s) of persons other than Agency members;

(f) Employ and fix the compensation of any person deemed to be necessary to its exercise of powers and performance of duties;

(g) Establish the rate of reimbursement to the members of the Agency for expenses in attending meetings, and pay the expenses of administering the Agency; and

(h) Provide for the bonding of all persons handling Agency funds in an amount and with surety thereon satisfactory to the Secretary.

§ 1065.117 Advertising, research, education, and promotion program.

The Agency shall develop and submit to the Secretary for approval all programs or projects undertaken under the authority of this part. Such programs or projects may provide for:

(a) The establishment, issuance, effectuation, and administration of appropriate programs or projects for the advertising and promotion of milk and milk products on a nonbrand basis;

(b) The utilization of the services of other organizations to carry out Agency programs and projects if the Agency finds that such activities will benefit producers under this part; and

(c) The establishment, support, and conduct of research and development projects and studies that the Agency finds will benefit all producers under this part.

§ 1065.118 Limitation of expenditures by the Agency.

(a) Not more than 5 percent of the funds received by the Agency pursuant to § 1065.121(b)(1) shall be utilized for administrative expense of the Agency.

(b) Agency funds shall not, in any manner, be used for political activity or for the purpose of influencing governmental policy or action, except in recommending to the Secretary amendments to the advertising and promotion program provisions of this part.

(c) Agency funds may not be expended to solicit producer participation.

(d) Agency funds may be used only for programs and projects promoting the domestic marketing and consumption of milk and its products.

§ 1065.119 Personal liability.

No member of the Agency shall be held personally responsible, either individually or jointly with others, in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, of such member in performance of his duties, except for acts of willful misconduct, gross negligence, or those which are criminal in nature.

§ 1065.120 Procedure for requesting refunds.

Any producer may apply for refund subject to the applicable conditions set forth in this section.

(a) Refund shall be accomplished only through application filed with, and in the manner prescribed by, the market administrator and signed by the producer. Only that information necessary to identify the producer and the records relevant to the refund may be required of such producer.

(b) Except as provided in paragraph (c) of this section, the request shall be submitted within the first 15 days of December, March, June, or September for milk to be marketed during the ensuing calendar quarter beginning on the first day of January, April, July, and October, respectively.

(c) A dairy farmer who first acquires producer status under this part after the 15th day of December, March, June, or September, as the case may be, and prior to the end of the ensuing calendar quarter may, upon application filed with the market administrator pursuant to paragraph (a) of this section, be eligible for refund on all marketings against which an assessment is withheld during such calendar quarter pursuant to § 1065.61(e): *Provided;* That, such eligibility for refund shall not apply to a dairy farmer who during the first 15 days of such December, March, June, or September, respectively, was a producer under an order where the same refund notification period applied and such dairy farmer did not appropriately submit refund application during such period. This paragraph also shall be applicable to all producers during the period following the effective date of this amending order to the beginning of the first full calendar quarter for which the opportunity exists for such producers to request refunds pursuant to paragraph (b) of this section.

(d) A dairy farmer who, with respect to any calendar quarter, has appropriately filed request for refund of program assessments on his marketings of milk under another order that provides for an advertising and promotion program will be eligible (on the basis of his request filed under the other order) for refunds with respect to his producer milk marketed under this order during such quarter for which deductions were made pursuant to § 1065.61(e).

§ 1065.121 Duties of the market administrator.

Except as specified in § 1065.116, the market administrator, in addition to other duties specified by this part, shall perform all the duties necessary to administer the terms and provisions of the advertising and promotion program including, but not limited to, the following:

(a) Within 30 days after the effective date of this amending order, and annually thereafter, conduct a referendum to determine representation on the Agency pursuant to § 1065.113(c);

(b) Set aside the amounts subtracted under § 1065.61(e) into an advertising and promotion fund, separately accounted for, from which shall be disbursed;

(1) To the Agency each month, all such funds less any necessary amount held in reserve to cover refunds pursuant to paragraph (b) (2) and (3) of this section, and payments to cover expenses of the market administrator incurred in the administration of the advertising and promotion program (including audit).

(2) Refund to producers the amounts of mandatory checkoff for advertising and promotion programs required under authority of State law applicable to such producers, but not in amounts that exceed a rate of 5 cents per hundredweight on the volume of milk pooled by any such producer for which deductions were made pursuant to § 1065.61(e).

(3) After the end of each calendar quarter, make a refund to each producer who has made application for such refund pursuant to § 1065.120. Such refund shall be computed at the rate of 5 cents per hundredweight of such producer's milk pooled for which deductions were made pursuant to § 1065.61(e) for such calendar quarter, less the amount of any refund otherwise made to the producer pursuant to paragraph (b)(2) of this section.

(c) Promptly after the effective date of this amending order, and thereafter with respect to new producers, forward to each producer a copy of the provisions of the advertising and promotion program (§§ 1065.110 through 1065.122).

(d) Make necessary audits to establish that all agency funds are used only for authorized purposes.

§ 1065.122 Liquidation.

In the event that the provisions of this advertising and promotion program are terminated, any remaining uncommitted funds applicable thereto shall revert

to the producer-settlement fund of § 1065.70.

PART 1068—MILK IN MINNEAPOLIS-ST. PAUL, MINN., MARKETING AREA

Subpart—Order Regulating Handling

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AUTHORITY: Secs. 1–19, 48 Stat. 31, as amended (7 U.S.C. 601–674).

Subpart—Order Regulating Handling

GENERAL PROVISIONS

§ 1068.1 General provisions.

The terms, definitions, and provisions in Part 1000 of this chapter are hereby incorporated by reference and made a part of this order.

DEFINITIONS

§ 1068.2 Minneapolis-St. Paul, Minn., marketing area.

"Minneapolis-St. Paul, Minn., marketing area" (referred to in this part as the "marketing area") means all the territory within the boundaries of the townships and counties listed below. The marketing area shall include all territory that is now, or in the future, occupied by Government (municipal, State, or Federal) reservations, installations, institutions, or other similar establishment if any part of such territory is within the designated geographical limits of the marketing area.

MINNESOTA COUNTIES

Anoka.
Benton.
Carver.
Chisago.
Dakota.
Hennepin.
Isanti.
Kanabec.
Kandiyohi.
McLeod.
Meeker.
Mille Lacs.
Pine.
Ramsey.
Renville.
Scott.
Sherburne.
Sibley.
Stearns.
Washington.
Wright.

WISCONSIN COUNTIES

In Pierce County, the townships of:
Clifton.
River Falls.

In St. Croix County, the townships of:

Hudson.
Kinnickinnic.
Richmond.
St. Joseph.
Somerset.
Stanton.
Star Prairie.
Troy.
Warren.

§ 1068.3 Route disposition.

"Route disposition" means any delivery either inside or outside the marketing area (including disposition by a vendor or from a plant store or from vending machines) of any fluid milk product classified as Class I milk to a wholesale or retail stop, including any governmentally operated institution, but excluding any disposition of skim milk or butterfat not eligible for sale in fluid form as Grade A milk in the marketing area from a nonpool plant to any other plant or to a commercial processor of foods.

§ 1068.4 Plant.

"Plant" means the entire land, buildings, surroundings, facilities and equipment, whether owned or operated by one or more persons, maintained and operated at the same location primarily for the receiving, processing or other handling of milk or milk products (including filled milk). Under this definition any separate portion of a premises or facilities qualified under § 1068.7(b) used to receive, process, or otherwise handle milk shall be deemed to be a separate plant. This definition shall not include any building, premises, facilities, or equipment used primarily (a) to hold or store bottled milk or milk products (including filled milk) in finished form in transit for wholesale or retail distribution on a route(s), or (b) to transfer milk from one conveyance to another in transit from farm to plant of first receipt.

§ 1068.5 [Reserved]

§ 1068.6 [Reserved]

§ 1068.7 Pool plant.

"Pool plant" means any plant meeting the conditions of paragraph (a) or (b) of this section, but not any plant withdrawn pursuant to paragraph (c) of this section, or any plant exempt pursuant to paragraph (d) of this section.

(a) A plant in which milk is processed or packaged and from which not less than 15 percent of its total disposition of Class I milk (except filled milk) during the month either by the operator of such plant or by another person is route disposition within the marketing area: *Provided,* That the total quantity of Class I milk (except filled milk) disposed of from such plant during the month either inside or outside the marketing area, is equal to 30 percent or more of such plant's total receipts of skim milk and butterfat eligible for sale in fluid form as Grade A milk within the marketing area in any of the months of January through June, or to 50 percent or more of such total receipts in any of the months of July through December.

(b) Any plant from which during any month 30 percent or more of such plant's total receipts for such month from farms of skim milk or butterfat eligible for sale in fluid form as Grade A milk within the marketing area is delivered (except as filled milk) to (1) a plant(s) which has qualified pursuant to paragraph (a) of this section, (2) any other plants located within the marketing area from which route disposition is made within the marketing area, or (3) a governmentally owned and operated institution which disposes of Class I milk solely for use on its own premises or to its own facilities: *Provided,* That if during each of the months of September, October, and November, 30 percent or more of such plant's receipts of skim milk or butterfat for such month as described above is delivered as provided in this paragraph, it shall be a pool plant through the following August: *And provided further,* That any deliveries of milk by a cooperative association during the months of September, October, and November directly from a farm(s) of its producer member(s) to a plant(s) described in paragraph (a) of this section may be considered, for purposes of this paragraph, as having been received first at a plant of such cooperative association.

(c) Upon written request by the handler to the market administrator, received or postmarked on or before the last day of any month, any plant qualified as a pool plant pursuant to paragraph (b) of this section may be withdrawn from pool plant status beginning with the next month. Any such plant

withdrawn from automatic pool plant status may not regain such status prior to the next September 1 and then only by meeting the requirements set forth in the first proviso of paragraph (b) of this section in the same manner as a plant qualifying for pool plant status for the first time.

(d) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) A plant withdrawn pursuant to paragraph (c) of this section; or

(3) A plant qualified as a pool plant pursuant to paragraph (a) or (b) of this section if the conditions of paragraph (d)(3) (i) and (ii) of this section are met. Such plant shall be exempt from the provisions of this part except for reports that may be required pursuant to § 1068.30(d) and verification of such reports by the market administrator in accordance with § 1000.5 of this chapter:

(i) The Secretary determines that a greater quantity of milk in fluid form is disposed of from such plant to a regulated marketing area as defined in another order issued pursuant to the Act either as route disposition, excluding filled milk, or to pool plants qualified on the basis of route disposition than is disposed of from such plant in the Minneapolis-St. Paul marketing area either as route disposition, excluding filled milk, or to pool plants qualified on the basis of route disposition.

(ii) Such milk would be subject to the class price and producer payment provisions of the other marketing agreement or order upon being made exempt from this part.

§ 1068.8 Nonpool plant.

"Nonpool plant" means any milk or filled milk receiving, manufacturing, or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant and from which fluid milk products eligible for sale as Grade A in consumer-type packages or dispenser units or filled milk are disposed of as route disposition in the marketing area during the month.

(d) "Unregulated supply plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant and from which a Grade A fluid milk product or filled milk is shipped during the month to a pool plant.

§ 1068.9 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of a pool plant(s);

(b) Any cooperative association with respect to milk of its members diverted for its account pursuant to § 1068.13;

(c) Any cooperative association qualifying as a handler pursuant to paragraph (a) of this section shall be, for the purposes of making payments pursuant to § 1068.71, the handler also with respect to producer milk caused to be delivered for the account of such association from the farms of producers to the pool plant(s) of an other handler(s);

(d) Any person in his capacity as the operator of a partially regulated distributing plant. This definition shall not apply to a governmentally owned and operated institution which disposes of Class I milk solely for use on its own premises or to its own facilities;

(e) A producer-handler;

(f) Any person in his capacity as the operator of an other order plant from which during the month there is route disposition in the marketing area or fluid milk products are shipped to a pool plant; or

(g) Any person in his capacity as the operator of an unregulated supply plant.

§ 1068.10 Producer-handler.

(a) "Producer-handler" means any person who meets all of the following conditions:

(1) Operates a dairy farm and a distribution plant at which Grade A milk of his own production is processed and packaged, and from which there is route disposition in the marketing area;

(2) Receives no milk or fluid milk products from the farms of other dairy farmers nor from any other source, except receipts of not more than 50,000 pounds of milk (3.5 percent milk equivalent of butterfat) during the month by transfer from pool plants of other handlers;

(3) Receives no nonfluid milk products from any source for use in reconstituting fluid milk products;

(4) Has route disposition consisting only of skim milk and butterfat obtained from his own farm production except that received pursuant to the exception set forth in paragraph (a)(2) of this section; and

(5) The maintenance, care and management of the dairy animals and other resources necessary to produce such milk and the processing, packaging, or distribution of such milk are the personal enterprise, and the personal risk, of such person.

(b) Any handler claiming producer-handler status shall furnish to the market administrator, for verification, evidence of his qualifications as a producer-handler pursuant to this section and shall furnish evidence of subsequent changes made in the manner of producing securing, or distributing milk that affect such qualifications as a producer-handler. Such verification by the market administrator shall be made within 15 days of receipt of the evidence and shall be effective as of the first day of the month during which verification is made.

§ 1068.11 [Reserved]

§ 1068.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk in compliance with the Grade A inspection requirements of a duly constituted health authority, and whose milk is received at a pool plant as producer milk directly from the farm or diverted pursuant to § 1068.13.

(b) "Producer" shall not include:

(1) A producer-handler as defined in any order (including this part) issued pursuant to the Act;

(2) Any person with respect to milk produced by him which is diverted to a pool plant from an other order plant if the other order designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to § 1068.44(a)(8) (iii) and the corresponding step of § 1068.44(b); and

(3) Any person with respect to milk produced by him which is reported as diverted to an other order plant if any portion of such person's milk so moved is assigned to Class I under the provisions of such other order.

§ 1068.13 Producer milk.

"Producer milk" means the skim milk and butterfat in Grade A milk of a producer which is:

(a) Received at a pool plant directly from a producer; or

(b) Diverted from a pool plant to a nonpool plant that is not a producer-handler plant, subject to the following conditions:

(1) Such milk shall be priced at the location of the nonpool plant to which diverted;

(2) In any month that less than 6 days' production of a producer is delivered to pool plants the quantity of milk of the producer diverted during the month that exceeds that delivered to pool plants shall not be producer milk;

(3) During the months of September through November, a cooperative association handler may divert for his account the milk of any member producer. The total quantity of producer milk diverted by such handler in excess of 10 percent of the milk received from member producers at pool plants during the month shall not be producer milk;

(4) During the months of December through August, a cooperative association handler may divert for his account the milk of any member producer. The total quantity of producer milk diverted by such handler in excess of 25 percent of the milk received from member producers at pool plants during the month shall not be producer milk;

(5) During the months of September through November, the operator of a pool plant, other than a cooperative association, may divert for his account the milk of any producer other than a member of a cooperative association. The total quantity of producer milk diverted by such handler in excess of 10 percent of the milk received at such pool plant during the month from producers who are not members of a cooperative association shall not be producer milk;

(6) During the months of December through August, the operator of a pool

plant, other than a cooperative association, may divert for his account the milk of any producer other than a member of a cooperative association. The total quantity of producer milk diverted by such handler in excess of 25 percent of the milk received at such pool plant during the month from producers who are not members of a cooperative association shall not be producer milk; and

(7) The diverting handler shall designate the dairy farmers whose milk is not producer milk pursuant to paragraph (b) (3), (4), (5), and (6) of this section. If the handler fails to make such designation, no milk diverted by him shall be producer milk.

§ 1068.14 Other source milk.

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk products specified in § 1068.40 (b) (1) from any source other than producers, handlers described in § 1068.9 (c), or pool plants;

(b) Receipts in packaged form from other plants of products specified in § 1068.40(b) (1);

(c) Products (other than fluid milk products, products specified in § 1068.40 (b) (1), and products produced at the plant during the same month) from any source which are reprocessed, converted into, or combined with another product in the plant during the month; and

(d) Receipts of any milk product (other than a fluid milk product or a product specified in § 1068.40(b) (1)) for which the handler fails to establish a disposition.

§ 1068.15 Fluid milk product.

(a) Except as provided in paragraph (b) of this section, "fluid milk product" means any of the following products in fluid or frozen form:

(1) Milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted; and

(2) Any milk product not specified in paragraph (a) (1) of this section or in § 1068.40(b) or (c) (1) (i) through (v) if it contains by weight at least 80 percent water and 6.5 percent nonfat milk solids and less than 9 percent butterfat and 20 percent total solids.

(b) The term "fluid milk product" shall not include:

(1) Evaporated or condensed milk (plain or sweetened), evaporated or condensed skim milk (plain or sweetened), formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, any product that contains by weight less than 6.5 percent nonfat milk solids, and whey; and

(2) The quantity of skim milk in any modified product specified in paragraph (a) of this section that is in excess of the quantity of skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

§ 1068.16 Fluid cream product.

"Fluid cream product" means cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

§ 1068.17 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted, or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid milk product, and contains less than 6 percent nonmilk fat (or oil).

§ 1068.18 Cooperative association.

"Cooperative association" means any cooperative marketing association of producers which the Secretary determines, after application by the association:

(a) Is qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act;"

(b) Has full authority in the sale of milk of its members and is engaged in making collective sales of or marketing milk or its products for its members; and

(c) Has its entire activities under the control of its members.

HANDLER REPORTS

§ 1068.30 Reports of receipts and utilization.

On or before the 10th day after the end of each month, each handler shall report for such month to the market administrator, in the detail and on the forms prescribed by the market administrator, as follows:

(a) Each handler, with respect to each of his pool plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the handler from the pool plant to other plants;

(2) Receipts of milk from handlers described in § 1068.9(c);

(3) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1068.40(b) (1); and

(6) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. Such report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1068.9 (b) and (c) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers; and

(2) The utilization or disposition of all such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to his receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

§ 1068.31 Payroll reports.

(a) On or before the last day of each month, each handler described in § 1068.9 (a), (b), and (c) shall report to the market administrator his producer payroll for the preceding month, in the detail prescribed by the market administrator, showing for each producer:

(1) His name and address;

(2) The total pounds of milk received from such producer;

(3) The average butterfat content of such milk; and

(4) The price per hundredweight, the gross amount due, the amount and nature of any deductions, and the net amount paid.

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1068.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1068.32 Other reports.

In addition to the reports required pursuant to §§ 1068.30 and 1068.31, the following shall be reported to the market administrator:

(a) Each handler specified in § 1068.9 (g) who operates an unregulated supply plant shall report as required in § 1068.30, except that the receipts of skim milk and butterfat in Grade A milk shall be reported in lieu of those in producer milk.

(b) Each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligation under the order.

CLASSIFICATION OF MILK

§ 1068.40 Classes of utilization.

Except as provided in § 1068.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1068.30 shall be classified as follows:

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product, except as otherwise provided in paragraphs (b) and (c) of this section; and

(2) Not specifically accounted for as Class II or Class III milk.

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid cream product, eggnog, yogurt, and any product containing 6 percent or more nonmilk fat (or oil) that resembles a fluid cream product, eggnog, or yogurt, except as otherwise provided in paragraph (c) of this section;

(2) In packaged inventory at the end of the month of the products specified in paragraph (b)(1) of this section;

(3) In bulk fluid milk products and bulk fluid cream products disposed of to any commercial food processing establishment (other than a milk or filled milk plant) at which food products (other than milk products and filled milk) are processed and from which there is no disposition of fluid milk products or fluid cream products other than those received in consumer-type packages; and

(4) Used to produce:

(i) Cottage cheese, lowfat cottage cheese, and dry curd cottage cheese;

(ii) Milkshake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts, and frozen dessert mixes;

(iii) Any concentrated milk product in bulk, fluid form other than that specified in paragraph (c)(1)(iv) of this section;

(iv) Plastic cream, frozen cream, and anhydrous milkfat;

(v) Custards, puddings, and pancake mixes; and

(vi) Formulas 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 § 1068.15; and

(6) In shrinkage assigned pursuant to § 1068.41(a) to the receipts specified in § 1064.41(a)(2) and in shrinkage specified in § 1068.41 (b) and (c).

§ 1068.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1068.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraph (b) (1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) In other source milk not specified in paragraph (b) (1) through (6) of this section which was received in the form of a bulk fluid milk product or a bulk fluid cream product;

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in paragraph (a)(1) of this section that is not in excess of:

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant);

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1068.9(c), except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be 2 percent;

(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer milk diverted from such plant by the plant operator to another plant, except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be zero;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other pool plants;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other order plants, excluding the quantity for which Class II or Class III classification is requested by the operators of both plants;

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received from unregulated supply plants, excluding the quantity for which Class II or Class III classification is requested by the handler; and

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products transferred to other plants that is not in excess of the respective amounts of skim milk and butterfat to which percentages are applied in paragraph (b) (1), (2), (4), (5), and (6) of this section; and

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1068.9 (b) or (c), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

§ 1068.42 Classification of transfers and diversions.

(a) *Transfers to pool plants.* Skim milk or butterfat transferred in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant shall be classified as Class I milk unless the operators of both plants request the same classification in another class. In either case, the classification of such transfers shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant after the computations pursuant to § 1068.44(a)(12) and the corresponding step of § 1068.44(b);

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1068.44(a)(7) or the corresponding step of § 1068.44(b), the skim milk or butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor-handler received during the month other source milk to be allocated pursuant to § 1068.44(a) (11) or (12) or the corresponding steps of § 1068.44(b), the skim milk or butterfat so transferred up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant.

(b) *Transfers and diversions to other order plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to an other order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the pool plant from the other order plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in paragraph (b) (1), (2), or (3) of this section:

(1) If transferred as packaged fluid milk products, classification shall be in the classes to which allocated as a fluid milk product under the other order;

(2) If transferred in bulk form, classification shall be in the classes to which allocated under the other order (including allocation under the conditions set forth in paragraph (b)(3) of this section);

(3) If the operators of both plants so request in their reports of receipts and utilization filed with their respective market administrators, transfers or diversions in bulk form shall be classified as Class II or Class III milk to the extent of such utilization available for such classification pursuant to the allocation provisions of the other order;

(4) If information concerning the classes to which such transfers or diversions were allocated under the other order is not available to the market administrator for the purpose of establishing classification under this paragraph, classification shall be as Class I, subject to adjustment when such information is available;

(5) For purposes of this paragraph, if the other order provides for a different number of classes of utilization than is provided for under this part, skim milk or butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I milk, and skim milk or butterfat allocated to the other classes shall be classified as Class III milk; and

(6) If the form in which any fluid milk product that is transferred to an other order plant is not defined as a fluid milk product under such other order, classification under this paragraph shall be in accordance with the provisions of § 1068.40.

(c) *Transfers to producer-handlers.* Skim milk or butterfat transferred in the following forms from a pool plant to a producer-handler under this or any other Federal order shall be classified:

(1) As Class I milk, if transferred in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it by the market administrator, if transferred in the form of a bulk fluid cream product. For this purpose, the producer-handler's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to his receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) *Transfers and diversions to other nonpool plants.* Skim milk or butterfat transferred or diverted in the following forms from a pool plant to a nonpool plant that is not an other order plant or a producer-handler plant shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in paragraph (d)(2)(i) (*a*) and (*b*) of this section are met, transfers or diversions in bulk form shall be classified on the basis of the assignment of the nonpool plant's utilization to its receipts as set forth in paragraph (d)(2) (ii) through (viii) of this section:

(*a*) The transferor-handler or divertor-handler claims such classification in his report of receipts and utilization filed pursuant to § 1068.30 for the month within which such transaction occurred; and

(*b*) The nonpool plant operator maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available for verification purposes if requested by the market administrator;

(ii) Route disposition in the marketing area of each Federal milk order from the nonpool plant and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of packaged fluid milk products at such nonpool plant from pool plants;

(*b*) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from other order plants;

(*c*) Pro rata to receipts of bulk fluid milk products at such nonpool plant from pool plants; and

(*d*) Pro rata to any remaining unassigned receipts of bulk fluid milk products at such nonpool plant from other order plants;

(iii) Any remaining Class I disposition of packaged fluid milk products from the nonpool plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from pool plants and other order plants;

(iv) Transfers of bulk fluid milk products from the nonpool plant to a plant fully regulated under any Federal milk order, to the extent that such transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the transferee-plant, shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of fluid milk products at such nonpool plant from pool plants; and

(*b*) Pro rata to any remaining unassigned receipts of fluid milk products at such nonpool plant from other order plants;

(v) Any remaining unassigned Class I disposition from the nonpool plant shall be assigned to the extent possible in the following sequence:

(*a*) To such nonpool plant's receipts from dairy farmers who the market administrator determines constitute regular sources of Grade A milk for such nonpool plant; and

(*b*) To such nonpool plant's receipts of Grade A milk from plants not fully regulated under any Federal milk order which the market administrator determines constitute regular sources of Grade A milk for such nonpool plant;

(vi) Any remaining unassigned receipts of bulk fluid milk products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class I utilization, then to Class III utilization, and then to Class II utilization at such nonpool plant;

(vii) Receipts of bulk fluid cream products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class III utilization, then to any remaining Class II utilization, and then to Class I utilization at such nonpool plant; and

(viii) In determining the nonpool plant's utilization for purposes of this subparagraph, any fluid milk products and bulk fluid cream products transferred from such nonpool plant to a plant not fully regulated under any Federal milk order shall be classified on the basis of the second plant's utilization using the same assignment priorities at the second plant that are set forth in this subparagraph.

§ 1068.43 General classification rules.

In determining the classification of producer milk pursuant to § 1068.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1068.30 and shall compute separately for each pool plant and for each cooperative association with respect to milk for which it is the handler pursuant to § 1068.9 (b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1068.40, 1068.41, and 1068.42;

(b) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids;

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1068.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association; and

(d) For classification purposes, pursuant to §§ 1068.40 through 1068.45, butterfat in skim milk either disposed of to others or used in the manufacture of milk products shall be accounted for at a butterfat content of 0.065 percent, unless the handler has adequate records of the actual butterfat content of such skim milk.

§ 1068.44 Classification of producer milk.

For each month the market administrator shall determine the classification

of producer milk of each handler described in § 1068.9(a) for each of his pool plants separately and of each handler described in § 1068.9 (b) and (c) by allocating the handler's receipts of skim milk and butterfat to his utilization as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1068.41 (b);

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products received in packaged form from an other order plant, except that to be subtracted pursuant to paragraph (a)(7)(vi) of this section, as follows:

(i) From Class III milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(4) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 1068.40(b)(1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(5) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1068.40(b)(1) that were in inventory at the beginning of the month in packaged form, but not in excess of the pounds of skim milk remaining in Class II. This subparagraph shall apply only if the pool plant was subject to the provisions of this subparagraph or comparable provisions of another Federal milk order in the immediately preceding month;

(6) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or a fluid cream product) that is used to produce, or added to, any product specified in § 1068.40(b), but not in excess of the pounds of skim milk remaining in Class II;

(7) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Other source milk (except that received in the form of a fluid milk product) and, if paragraph (a)(5) of this section applies, packaged inventory at the beginning of the month of products specified in § 1068.40(b)(1) that was not subtracted pussuant to paragraph (a)(4), (5), and (6) of this section;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established;

(iii) Receipts of fluid milk products from unidentified sources;

(iv) Receipts of fluid milk products from a producer-handler as defined under this or any other Federal milk order;

(v) Receipts of reconstituted skim milk in filled milk from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2) of this section; and

(vi) Receipts of reconstituted skim milk in filled milk from an other order plant that is regulated under any Federal milk order providing for individual-handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor-plant;

(8) Subtract in the order specified below from the pounds of skim milk remaining in Class II and Class III, in sequence beginning with Class III:

(i) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2) and (7)(v) of this section for which the handler requests a classification other than Class I, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(ii) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2), (7)(v), and (8)(i) of this section which are in excess of the pounds of skim milk determined pursuant to paragraph (a)(8)(ii) (*a*) through (*c*) of this section. Should the pounds of skim milk to be subtracted from Class II and Class III combined exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount:

(*a*) Multiply by 1.25 the sum of the pounds of skim milk remaining in Class I at this allocation step at all pool plants of the handler (excluding any duplication of Class I utilization resulting from reported Class I transfers between pool plants of the handler);

(*b*) Subtract from the above result the sum of the pounds of skim milk in receipts at all pool plants of the handler of producer milk, milk from a handler described in § 1068.9(c), fluid milk products from pool plants of other handlers, and bulk fluid milk products from other order plants that were not subtracted pursuant to paragraph (a)(7)(vi) of this section; and

(c) Multiply any plus quantity resulting above by the percentage that the receipts of skim milk in fluid milk products from unregulated supply plants that remain at this pool plant is of all such receipts remaining at this allocation step at all pool plants of the handler; and

(iii) The pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraph (a)(7)(vi) of this section, if Class II or Class III classification is requested by the operator of the other order plant and the handler, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(9) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 1068.40(b)(1) in inventory at the begining of the month that were not subtracted pursuant to paragraph (a)(5) and (7)(i) of this section;

(10) Add to the remaining pounds of skim milk in Class III the pounds of skim milk subtracted pursuant to paragraph (a)(1) of this section;

(11) Subject to the provisions of paragraph (a)(11) (i) and (ii) of this section, subtract from the pounds of skim milk remaining in each class at the plant, pro rata to the total pounds of skim milk remaining in Class I and in Class II and Class III combined at this allocation step at all pool plants of the handler (excluding any duplication of ultilization in each class resulting from transfers between pool plants of the handler), with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, the pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2), (7)(v), and (8) (i) and (ii) of this section and that were not offset by transfers or diversions of fluid milk products to the same unregulated supply plant from which fluid milk products to be allocated at this step were received:

(i) Should the pounds of skim milk to be subtracted from Class II and Class III combined pursuant to this subparagraph exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(ii) Should the pounds of skim milk to be subtracted from Class I pursuant to

this subparagraph exceed the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount, beginning with the nearest plant at which Class I utilization is available;

(12) Subtract in the manner specified below from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraph (a)(7)(vi) and (8)(iii) of this section:

(i) Subject to the provisions of paragraph (a)(12)(ii), (iii), and (iv) of this section, such subtraction shall be pro rata to the pounds of skim milk in Class I and in Class II and Class III combined, with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, with respect to whichever of the following quantities represents the lower proportion of Class I milk:

(*a*) The estimated utilization of skim milk of all handlers in each class as announced for the month pursuant to § 1068.45(a); or

(*b*) The total pounds of skim milk remaining in each class at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler);

(ii) Should the proration pursuant to paragraph (a)(12)(i) of this section result in the total pounds of skim milk at all pool plants of the handler that are to be subtracted at this allocation step from Class II and Class III combined exceeding the pounds of skim milk remaining in Class II and Class III at all such plants, the pounds of such excess shall be subtracted from the pounds of skim milk remaining in Class I after such proration at the pool plants at which such other source milk was received;

(iii) Except as provided in paragraph (a)(12)(ii) of this section, should the computations pursuant to paragraph (a)(12)(i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class II and Class III combined that exceeds the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(iv) Except as provided in paragraph (a)(12)(ii) of this section, should the computations pursuant to paragraph (a)(12)(i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class I that exceeds the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation 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 § 1068.42(a); and

(14) If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) The quantity of producer milk in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to paragraph (a)(14) of this section and the corresponding step of paragraph (b) of this section.

§ 1068.45 Market administrator's reports and announcements concerning classification.

The market administrator shall make the following reports and announcements concerning classification:

(a) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1068.44(a)(12) and the corresponding step of § 1068.44(b), estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose.

(b) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from an other order plant, the class to which such receipts are allocated pursuant to § 1068.44 on the basis of such report, and, thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

(c) Furnish to each handler operating a pool plant who has shipped fluid milk products or bulk fluid cream products to an other order plant the class to which such shipments were allocated by the market administrator of the other order on the basis of the report by the receiving handler, and, as necessary, any changes in such allocation arising from the verification of such report.

Class Prices

§ 1068.50 Class prices.

Subject to the provisions of § 1068.52, the class prices for the month per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $1.06.

(b) *Class II price.* The Class II price shall be the basic formula price for the month plus 10 cents.

(c) *Class III price.* The Class III price shall be the basic formula price for the month.

§ 1068.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential (rounded to the nearest one-tenth cent) per one-tenth percent butterfat shall be 0.12 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month. For the purpose of computing the Class I price, the resulting price shall be not less than $4.33.

§ 1068.52 Plant location adjustments for handlers.

(a) The Class I price for producer milk received at a plant located at least 35 miles (as determined by the market administrator) from the Minnesota Transfer Viaduct at University Avenue in St. Paul, Minn., shall be reduced by an amount indicated below:

Plant location (miles)	*Amount of deduction (cents)*
Less than 35	0
35 but less than 45	6

For distances of 45 miles or more, an additional 1.5 cents for each 10 miles or fraction thereof beyond 45 miles.

(b) The Class I price applicable to other source milk shall be adjusted at the rates set forth in paragraph (a) of this section, except that the adjusted Class I price shall not be less than the Class III price.

§ 1068.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month and the Class II and Class III prices for the preceding month.

§ 1068.54 Equivalent price.

If for any reason a price or pricing constituent required by this part for computing class prices or for other purposes is not available as prescribed in this part, the market administrator shall use a price or pricing constituent determined by the Secretary to be equivalent to the price or pricing constituent that is required.

UNIFORM PRICE

§ 1068.60 Handler's value of milk for computing uniform price.

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler with respect to each of his pool plants and of each handler described in § 1068.9 (b) and (c) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1068.44 by the applicable class prices and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1068.44(a)(14) and the corresponding step of § 1068.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1068.74, that are applicable at the location of the pool plant;

(c) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the pool plant or the Class II price, as the case may be, for the current month by the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1068.44(a)(9) and the corresponding step of § 1068.44(b);

(d) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1068.44(a)(7) (i) through (iv) and the corresponding step of § 1068.44 (b), excluding receipts of bulk fluid cream products from an other order plant;

(e) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the transferor-plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1068.44(a)(7) (v) and (vi) and the corresponding step of § 1068.44(b);

(f) Add the amount obtained from multiplying the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1068.44(a)(11) and the corresponding step of § 1068.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order; and

(g) For the first month that this paragraph is effective, subtract the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class II price, both for the preceding month, by the hundredweight of skim milk and butterfat in any fluid milk product or product specified in § 1068.40 (b) that was in the plant's inventory at the end of the preceding month and classified as Class I milk.

§ 1068.61 Computation of uniform price.

For each month the market administrator shall compute a uniform price per hundredweight of milk of 3.5 percent butterfat content as follows:

(a) Combine into one total the values computed pursuant to § 1068.60 for all handlers who filed reports pursuant to § 1068.30 for the month and who made the payments pursuant to § 1068.71 for the preceding month;

(b) Add an amount equal to the total value of the location adjustments computed pursuant to § 1068.75;

(c) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(d) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1068.60(f); and

(f) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the "uniform price" for milk received from producers.

§ 1068.62 Announcement of uniform price and butterfat differential.

The market administrator shall announce publicly on or before:

(a) The fifth day after the end of each month the butterfat differential for such month; and

(b) The 15th day after the end of each month the uniform price for such month.

PAYMENTS FOR MILK

§ 1068.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to §§ 1068.71, 1068.76, and 1068.77 and out of which he shall make all payments due handlers pursuant to §§ 1068.72 and 1068.77: *Provided*, That the market administrator shall offset any payments due any handler against payments due from such handler.

§ 1068.71 Payments to the producer-settlement fund.

(a) On or before the 18th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the amount specified in paragraph (a)(1) of this section exceeds the amount specified in paragraph (a)(2) of this section: *Provided*, That payment made by a cooperative association as a handler pursuant to this paragraph with respect to milk transferred to another handler from the pool plant of such cooperative association or caused to be delivered to such handler from the farms of producers for the account of such cooperative association shall not relieve the transferee-handler of any obligation on any such milk which is due the cooperative association, or otherwise due pursuant to §§ 1068.70 through 1068.75, §§ 1068.77 and 1068.78, and §§ 1068.85 and 1068.86:

(1) The total value of milk of the handler for such month as determined pursuant to § 1068.60.

(2) The sum of:

(i) The value at the uniform price, as adjusted pursuant to § 1068.75, of such handler's receipts of producer milk; and

(ii) The value at the uniform price applicable at the location of the plant from which received of other source milk for which a value is computed pursuant to § 1068.60(f).

(b) On or before the 25th day after the end of the month each person who operated an other order plant that was regulated during such month under an order providing for individual-handler pooling shall pay to the market administrator an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk in route disposition from such plant in the marketing area which was allocated to Class I at such plant. If there is such route disposition from such plant in marketing areas regulated by two or more market-wide pool orders, the reconstituted skim milk allocated to Class I shall be prorated to each other according to such route disposition in each marketing area; and

(2) Compute the value of the reconstituted skim milk assigned in paragraph (b)(1) of this section to route disposition in this marketing area by multiplying the quantity of such skim milk by the difference between the Class I price under this part that is applicable at the location of the other order plant (but not to be less than the Class III price) and the Class III price.

§ 1068.72 Payments from the producer-settlement fund.

On or before the 19th day after the end of each month, the market administrator shall pay, subject to the proviso of § 1068.70, to each handler the amount,

if any, by which the amount computed pursuant to § 1068.71(a)(2) exceeds the amount computed pursuant to § 1068.71(a)(1).

§ 1068.73 Payments to producers and to cooperative associations.

Each handler shall make payment for milk received from producers or cooperative associations as follows:

(a) On or before the 11th day after the end of the month in which the skim milk or butterfat was received, to a cooperative association which is a handler, for all skim milk and butterfat received from a pool plant(s) operated by such cooperative association or caused by it to be delivered to such handler from producers' farms, at not less than the class prices, as adjusted by the butterfat differential specified in § 1068.74, that are applicable at the location of the receiving handler's pool plant, less the amount of payment made pursuant to paragraph (c) of this section.

(b) On or before the 21st day after the end of the month during which the milk was received, to each producer for milk not caused to be delivered to such handler by a cooperative association which is a handler, as follows: *Provided*, That such payment shall be made, upon request, to a cooperative association which is not a handler, or to its duly authorized agent, with respect to milk received from each producer who has given such association authorization by contract or by other written instrument to collect the proceeds from the sale of his milk, and any payment made pursuant to this proviso shall be made on or before the 20th day after the end of such month:

(1) At not less than the uniform price computed pursuant to § 1068.61, subject to the butterfat and location differentials set forth in §§ 1068.74 and 1068.75, and less the amount of payment made pursuant to paragraph (c) of this section.

(c) Handlers (other than cooperative associations) shall make partial payments to producers and cooperative associations pursuant to paragraph (c)(1) and (2) of this section: *Provided*, That in the event any producer discontinues shipping to such handler during the month, such partial payment shall not be made and full payment for all milk received from such producer during such month shall be made pursuant to paragraphs (a) and (b) of this section.

(1) On or before the 25th day of each month, each handler shall make payment, except as set forth in paragraph (c)(2) of this section, to each producer, at not less than the applicable uniform price computed pursuant to § 1068.61 for the preceding month, for the milk of such producer received by such handler during the first 15 days of the current month;

(2) On or before the 20th day of each month, each handler shall make payment to a cooperative association which is not a handler for milk of producers from whom such association has received written authorization to collect payment, at not less than such uniform price for the preceding month, for all such milk received by such handler during the first 15 days of the current month; and

(3) On or before the 20th day of each month, each handler shall make payment to a cooperative association which is a handler, at not less than the Class I price for the current month pursuant to § 1068.50 for all skim and butterfat received from a pool plant(s) operated by such cooperative association, or caused by such association to be delivered from the producer's farms to such handler, during the first 15 days of the current month.

(4) All payments made pursuant to this paragraph shall be subject to the butterfat differential specified in § 1068.74 and location adjustments specified in § 1068.75 applicable at the location of the plant of the handler making the payment.

(d) In making payment to individual producers as required by this section, each handler shall furnish each producer from whom he received milk a supporting statement, in such form that it may be retained by the producer, which shall show:

(1) The month involved, and the identity of the handler and of the producer;

(2) The total pounds and the average butterfat content of the milk received from the producer;

(3) The minimum rate at which payment to the producer is required pursuant to this section;

(4) The rate used in making the payment if such rate is other than the applicable minimum;

(5) The amount (or rate) per hundredweight of each deduction claimed by the handler, including any deduction claimed under § 1068.86, together with a description of the respective deductions; and

(6) The net amount of the payment to the producer.

§ 1068.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.115 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month.

§ 1068.75 Plant location adjustments for producers and on nonpool milk.

(a) In making payments pursuant to § 1068.73 (b) and (c) for milk received at a pool plant located 35 miles or more from the Minnesota Transfer Viaduct at University Avenue in St. Paul, Minn., each handler shall deduct from the applicable price payable to such producers an amount in accordance with the location of the plant based on the rates set forth in § 1068.52; and

(b) For the purpose of computations pursuant to §§ 1068.71 and 1068.72, the uniform price shall be adjusted at the rates set forth in § 1068.52 applicable at the location of the nonpool plant from which the milk was received, except that the uniform price shall not be less than the Class III price.

§ 1068.76 Payments by handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay on or before the 25th day after the end of the month to the market administrator for the producer-settlement fund the amount computed pursuant to paragraph (a) of this section. If the handler submits pursuant to §§ 1068.30(b) and 1068.31(b) the information necessary for making the computations, such handler may elect to pay in lieu of such payment the amount computed pursuant to paragraph (b) of this section:

(a) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the pounds of route disposition in the marketing area from the partially regulated distributing plant;

that an equivalent amount of fluid milk products received at the partially regulated distributing plant:

(i) As Class I milk from pool plants and other order plants, except that subtracted under a similar provision of another Federal milk order; and

(ii) From another nonpool plant that is not an other order plant to the extent that an equivalent amount of fluid milk products disposed of to such nonpool plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract the pounds of reconstituted skim milk in route disposition in the marketing area from the partially regulated distributing plant;

(4) Multiply the remaining pounds by the difference between the Class I price and the uniform price, both prices to be applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price); and

(5) Add the amount obtained from multiplying the pounds of reconstituted skim milk specified in paragraph (a)(3) of this section by the difference between the Class I price applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price) and the Class III price.

(b) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the value that would have been computed pursuant to § 1068.60 for the partially regulated distributing plant if the plant had been a pool plant, subject to the following modifications:

(i) Fluid milk products and bulk fluid cream products received at the partially

regulated distributing plant from a pool plant or an other order plant shall be allocated at the partially regulated distributing plant to the same class in which such products were classified at the fully regulated plant;

(ii) Fluid milk products and bulk fluid cream products transferred from the partially regulated distributing plant to a pool plant or an other order plant shall be classified at the partially regulated distributing plant in the class to which allocated at the fully regulated plant. Such transfers shall be allocated to the extent possible to those receipts at the partially regulated distributing plant from pool plants and other order plants that are classified in the corresponding class pursuant to paragraph (b)(1)(i) of this section. Any such transfers remaining after the above allocation which are classified in Class I and for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1068.60 shall be priced at the uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee-plant, with such uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

(iii) If the operator of the partially regulated distributing plant so requests, the value of milk determined pursuant to § 1068.60 for such handler shall include, in lieu of the value of other source milk specified in § 1068.60(f) less the value of such other source milk specified in § 1068.71(a)(2)(ii), a value of milk determined pursuant to § 1068.60 for each nonpool plant that is not an other order plant which serves as a supply plant for such partially regulated distributing plant by making shipments to the partially regulated distributing plant during the month equivalent to the requirements of § 1068.7(b), subject to the following conditions:

(*a*) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1068.30 (b) and 1068.31(b) similar reports for each such nonpool supply plant;

(*b*) The operator of such nonpool supply plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for verification purposes; and

(*c*) The value of milk determined pursuant to § 1068.60 for such nonpool supply plant shall be determined in the same manner prescribed for computing the obligation of such partially regulated distributing plant; and

(2) From the partially regulated distributing plant's value of milk computed pursuant to paragraph (b)(1) of this section, subtract:

(i) The gross payments by the operator of such partially regulated distributing plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1068.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated;

(ii) If paragraph (b)(1)(iii) of this section applies, the gross payments by the operator of such nonpool supply plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1068.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated; and

(iii) The payments by the operator of the partially regulated distributing plant to the producer-settlement fund of another order under which such plant is also a partially regulated distributing plant and like payments by the operator of the nonpool supply plant if paragraph (b)(1)(iii) of this section applies.

§ 1068.77 Adjustment of accounts.

(a) Whenever verification by the market administrator of reports or payments by any handler discloses errors in payments to the producer-settlement fund pursuant to §1068.71, the market administrator shall promptly bill such handler for any unpaid amount and such handler shall, within 5 days of such billing, make payment to the market administrator of the amount so billed. Whenever verification discloses that payment is due from the market administrator to any handler, the market administrator shall, within 5 days, make payment to such handler.

(b) Whenever verification by the market administrator of the payments by a handler to any producer or cooperative association discloses payment of less than is required by §1068.73, the handler shall pay the balance due such producer or cooperative association not later than the time for making payments next following such disclosure.

§ 1068.78 Charges on overdue accounts.

Any unpaid obligation of a handler pursuant to §§1068.71, 1068.76, and 1068.77(a), for which remittance has not been made by the close of business on the next day following the date specified for such payment shall be increased three-fourths of 1 percent for each month and any remaining amount due shall be increased at a similar rate on the corresponding day of each month thereafter until paid. The amounts payable pursuant to this section shall be computed monthly on each unpaid obligation, which shall include any unpaid charges previously made pursuant to this section; and for the purpose of this section any obligation that was determined at a date later than prescribed by the order because of a handler's failure to submit a report to the market administrator when due, shall be considered to have been payable by the date it would have been due if the report had been filed when due.

Administrative Assessment and Marketing Service Deduction

§ 1068.85 Assessment for order administration.

As his pro rata share of the expense of administration of the order, each handler shall pay to the market administrator on or before the 15th day after the end of the month 3 cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to:

(a) Producer milk (including such handler's own production);

(b) Other source milk allocated to Class I pursuant to § 1068.44(a) (7) and (11) and the corresponding steps of § 1068.44(b), except such other source milk that is excluded from the computations pursuant to § 1068.60 (d) and (f); and

(c) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the skim milk and butterfat subtracted pursuant to § 1068.76(a)(2).

§ 1068.86 Deduction for marketing services.

(a) *Deductions for marketing services.* Except as set forth in paragraph (b) of this section, each handler, in making payments to producers (other than himself) pursuant to § 1068.73, shall make a deduction of 6 cents per hundredweight, or such lesser deduction as the Secretary from time to time may prescribe, with respect to all milk received from producers' farms during the month, and shall pay such deductions to the market administrator on or before the 18th day after the end of such month. Such moneys shall be expended by the market administrator for market information to, and for the verification of weights, sampling, and testing of milk received from, said producers.

(b) *Producers' cooperative associations.* In the case of producers for whom a cooperative association which the Secretary determines to be qualified under the provisions of the act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act," is actually performing, as determined by the Secretary, the services set forth in paragraph (a) of this section, no such deduction shall be made.

PART 1069—MILK IN DULUTH-SUPERIOR MARKETING AREA

Subpart—Order Regulating Handling

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1069.85 Assessment for order administration.
1069.86 Deduction for marketing services.

AUTHORITY: Secs. 1–19, 48 Stat. 31, as amended (7 U.S.C. 601–674).

Subpart—Order Regulating Handling

GENERAL PROVISIONS

§ 1069.1 General provisions.

The terms, definitions, and provisions in Part 1000 of this chapter are hereby incorporated by reference and made a part of this order.

DEFINITIONS

§ 1069.2 Duluth-Superior marketing area.

"Duluth-Superior marketing area", hereinafter called the "marketing area", means all of the territory within Carlton County and the city of Duluth, in the State of Minnesota; and all of the territories within the counties of Ashland, Bayfield, and Douglas, in the State of Wisconsin.

§ 1069.3 Route disposition.

"Route disposition" means any delivery to retail or wholesale outlets (including delivery by a vendor or a sale from a plant or plant store) of any fluid milk product classified as Class I milk, other than a delivery in bulk form to a pool plant or nonpool plant.

§ 1069.4 [Reserved]

§ 1069.5 Distributing plant.

"Distributing plant" means a plant in which any Grade A fluid milk product is pasteurized or packaged and from which there is route disposition during the month in the marketing area.

§ 1069.6 Supply plant.

"Supply plant" means a plant from which Grade A milk is shipped during the month to a pool plant.

§ 1069.7 Pool plant.

Except as provided in paragraph (d) of this section, "pool plant" means:

(a) Any plant, hereinafter referred to as a "distributing pool plant", in which fluid milk products are pasteurized or packaged and from which there is route disposition during the month, except filled milk, equal to 50 percent or more of total receipts of Grade A milk at such plant from dairy farmers, from other plants, and from cooperative associations in their capacity as handlers and from which there is route disposition, except filled milk, in the marketing area equal to 10 percent or more of such total receipts: *Provided*, That such route disposition (not including filled milk) in the marketing area averages at least 500 pounds per day.

(b) Any plant, hereinafter referred to as a "supply pool plant", from which during the month 50 percent or more of its supply of Grade A milk from dairy farmers is moved to a distributing pool plant(s): *Provided*, That any supply plant which has qualified as a pool plant in each of the months of September, October, and November, shall be a pool plant for each of the following months of December through August unless written request for nonpool status is furnished in advance to the market administrator.

(c) A plant(s) (1) which is approved by a duly constituted health authority for the handling of Grade A milk, (2) which is operated by a cooperative association, and (3) from which the quantity of milk transferred by the association to plants specified in paragraph (a) of this section or delivered directly from the farm to such plants is equal to at least the following percentages, in the months indicated, of the quantity of Grade A milk delivered by all producers who are members of such association:

Month	*Minimum percentage*
September, October, November	40
April, May, June	20
All other months	30

The association shall furnish written notice to the market administrator specifying the plant(s) to be qualified pursuant to this paragraph and the period during which such consideration shall apply. Such notice, and notice of any change in designation, shall be furnished on or before the 7th day following the month to which such notice applies.

(d) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant; and

(2) A plant which would be subject to the classification and pricing provisions of another order issued pursuant to the Act unless:

(i) Such plant is qualified as a pool plant pursuant to paragraph (a), (b), or (c) of this section and a greater volume of Class I milk, except filled milk, is disposed of from such plant in the Duluth-Superior marketing area than in the marketing area regulated pursuant to such other order; or

(ii) The Secretary determines that the applicable order should more appropriately be determined on some other basis.

§ 1069.8 Nonpool plant.

"Nonpool plant" means any milk or filled milk receiving, manufacturing, or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant and from which there is route disposition in consumer-type packages or dispenser units in the marketing area during the month.

(d) "Unregulated supply plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant, from which fluid milk products are shipped during the month to a pool plant.

§ 1069.9 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of a pool plant.

(b) Any cooperative association with respect to the milk of producers which is diverted pursuant to § 1069.12 for the account of such cooperative association.

(c) Any cooperative association which chooses to report as a handler with respect to the milk of its member producers which is delivered to the pool plant of another handler in a tank truck owned or operated by or under contract to such cooperative association for the account of such cooperative association. Such milk shall be considered as having been received by such cooperative association at the plant to which it is delivered.

(d) Any person who operates a partially regulated distributing plant.

(e) A producer-handler.

(f) Any person in his capacity as the operator of an other order plant that is either a distributing plant or a supply plant.

§ 1069.10 Producer-handler.

"Producer-handler" means a person who operates both a dairy farm(s) and a milk processing or bottling plant at which each of the following conditions are met during the month:

(a) Milk is received from the dairy farm(s) of such person but from no other dairy farm;

(b) There is route disposition in the marketing area; and

(c) The butterfat or skim milk disposed of in the form of fluid milk products does not exceed the butterfat or skim milk, respectively, received in the form of milk from the dairy farm(s) of such person and in the form of fluid milk products in bulk or in packaged form from pool plants of other handlers: *Provided*, That such person shall furnish to the market administrator for his verification, subject to review by the Secretary, evidence that the maintenance, care and management of the dairy animals and other resources necessary for the production of milk in his name are and continue to be the personal enterprise of and at the personal risk of such producer and the processing, packaging and distribution of the milk are and continue to be the personal enterprise of and at the personal risk of such person in his capacity as a handler.

§ 1069.11 [Reserved]

§ 1069.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk in compliance with the Grade A inspection requirements of, or acceptable to, a duly constituted health authority, and whose milk is:

(1) Received at a pool plant; or

(2) Diverted from a pool plant to a nonpool plant by a handler or cooperative association for the account of such handler or cooperative association. Milk so diverted shall be deemed to have been received by the diverting handler at the plant from which it is diverted.

(b) "Producer" shall not include:

(1) A producer-handler as defined in any order (including this part) issued pursuant to the Act;

(2) Any person with respect to milk produced by him which is diverted to a pool plant from an other order plant if the other order designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to § 1069.44(a)(8)(iii) and the corresponding step of § 1069.44(b); and

(3) Any person with respect to milk produced by him which is reported as diverted to an other order plant if any portion of such person's milk so moved is assigned to Class I under the provisions of such other order.

§ 1069.13 Producer milk.

"Producer milk" means all skim milk and butterfat in milk produced by a producer and received at a pool plant directly from producers or diverted pursuant to § 1069.12.

§ 1069.14 Other source milk.

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk products specified in § 1069.40(b)(1) from any source other than producers, handlers described in § 1069.9(c), or pool plants;

(b) Receipts in packaged form from other plants of products specified in § 1069.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1069.40(b)(1), and products produced at the plant during the same month) from any source which are reprocessed, converted into, or combined with another product in the plant during the month; and

(d) Receipts of any milk product (other than a fluid milk product or a product specified in §1069.40(b)(1)) for which the handler fails to establish a disposition.

§ 1069.15 Fluid milk product.

(a) Except as provided in paragraph (b) of this section, "fluid milk product" means any of the following products in fluid or frozen form:

(1) Milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted; and

(2) Any milk product not specified in paragraph (a)(1) of this section or in § 1069.40 (b) or (c)(1) (i) through (v) if it contains by weight at least 80 percent water and 6.5 percent nonfat milk solids and less than 9 percent butterfat and 20 percent total solids.

(b) The term "fluid milk product" shall not include:

(1) Evaporated or condensed milk (plain or sweetened), evaporated or condensed skim milk (plain or sweetened), formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, any product that contains by weight less than 6.5 percent nonfat milk solids, and whey; and

(2) The quantity of skim milk in any modified product specified in paragraph (a) of this section that is in excess of the quantity of skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

§ 1069.16 Fluid cream product.

"Fluid cream product" means cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

§ 1069.17 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted, or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid milk product, and contains less than 6 percent nonmilk fat (or oil).

§ 1069.18 Cooperative association.

"Cooperative association" means any cooperative marketing association of producers which the Secretary determines, after application by the association, to be qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act."

HANDLER REPORTS

§ 1069.30 Reports of receipts and utilization.

On or before the seventh day after the end of each month, each handler shall report for such month to the market administrator, in the detail and on the forms prescribed by the market administrator, as follows:

(a) Each handler, with respect to each of his pool plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the handler from the pool plant to other plants;

(2) Receipts of milk from handlers described in § 1069.9(c);

(3) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1069.40(b)(1); and

(6) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. Such report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1069.9(b) and (c) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers; and

(2) The utilization or disposition of all such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to his receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

§ 1069.31 Payroll reports.

(a) On or before the 25th day after the end of each month, each handler described in § 1069.9 (a), (b), and (c) shall report to the market administrator his producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer:

(1) His name and address;

(2) The total pounds of milk received from such producer;

(3) The average butterfat content of such milk; and

(4) The price per hundredweight, the gross amount due, the amount and nature of any deductions, and the net amount paid.

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1069.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1069.32 Other reports.

In addition to the reports required pursuant to §§ 1069.30 and 1069.31, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligation under the order.

CLASSIFICATION OF MILK

§ 1069.40 Classes of utilization.

Except as provided in § 1069.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1069.30 shall be classified as follows:

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product, except as otherwise provided in paragraphs (b) and (c) of this section; and

(2) Not specifically accounted for as Class II or Class III milk.

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid cream product, eggnog, yogurt, and any product containing 6 percent or more nonmilk fat (or oil) that resembles a fluid cream product, eggnog, or yogurt, except as otherwise provided in paragraph (c) of this section;

(2) In packaged inventory at the end of the month of the products specified in paragraph (b)(1) of this section;

(3) In bulk fluid milk products and bulk fluid cream products disposed of to any commercial food processing establishment (other than a milk or filled milk plant) at which food products (other than milk products and filled milk) are processed and from which there is no disposition of fluid milk products or fluid cream products other than those received in consumer-type packages; and

(4) Used to produce:

(i) Cottage cheese, lowfat cottage cheese, and dry curd cottage cheese;

(ii) Milkshake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts, and frozen dessert mixes;

(iii) Any concentrated milk product in bulk, fluid form other than that specified in paragraph (c)(1)(iv) of this section;

(iv) Plastic cream, frozen cream, and anhydrous milkfat;

(v) Custards, puddings, and pancake mixes; and

(vi) Formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers.

(c) *Class III milk.* Class III milk shall be all skim milk and butterfat:

(1) Used to produce:

(i) Cheese (other than cottage cheese, lowfat cottage cheese, and dry curd cottage cheese);

(ii) Butter;

(iii) Any milk product in dry form;

(iv) Any concentrated milk product in bulk, fluid form that is used to produce a Class III product;

(v) Evaporated or condensed milk (plain or sweetened) in a consumer-type package and evaporated or condensed skim milk (plain or sweetened) in a consumer-type package; and

(vi) Any product not otherwise specified in this section;

(2) In inventory at the end of the month of fluid milk products in bulk or packaged form and products specified in paragraph (b)(1) of this section in bulk form;

(3) In fluid milk products and products specified in paragraph (b)(1) of this section that are disposed of by a handler for animal feed;

(4) In fluid milk products and products specified in paragraph (b)(1) of this section that are dumped by a handler if the market administrator is notified of such dumping in advance and is given the opportunity to verify such disposition;

(5) In skim milk in any modified fluid milk product that is in excess of the quantity of skim milk in such product that was included within the fluid milk product definition pursuant to § 1069.15; and

(6) In shrinkage assigned pursuant to § 1069.41(a) to the receipts specified in § 1069.41(a)(2) and in shrinkage specified in § 1069.41 (b) and (c).

§ 1069.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1069.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraph (b) (1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) In other source milk not specified in paragraph (b) (1) through (6) of this section which was received in the form of a bulk fluid milk product or a bulk fluid cream product;

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in paragraph (a) (1) of this section that is not in excess of:

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant);

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1069.9(c), except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be 2 percent;

(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer milk diverted from such plant by the plant operator to another plant, except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be zero;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other pool plants;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other order plants, excluding the quantity for which Class II or Class III classification is requested by the operators of both plants;

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received from unregulated supply plants, excluding the quantity for which Class II or Class III classification is requested by the handler; and

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products transferred to other plants that is not in excess of the respective amounts of skim milk and butterfat to which percentages are applied in paragraphs (b) (1), (2), (4), (5), and (6), of this section; and

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1069.9 (b) or (c), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

§ 1069.42 Classification of transfers and diversions.

(a) *Transfers to pool plants.* Skim milk or butterfat transferred in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant shall be classified as Class I milk unless the operators of both plants request the same classification in another class. In either case, the classification of such transfers shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant after the computations pursuant to § 1069.44(a)(12) and the corresponding step of § 1069.44(b);

(2) If the transferor-plant received during the month other source milk to

be allocated pursuant to § 1069.44(a)(7) or the corresponding step of § 1069.44(b), the skim milk or butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor-handler received during the month other source milk to be allocated pursuant to § 1069.44(a) (11) or (12) or the corresponding steps of § 1069.44(b), the skim milk or butterfat so transferred, up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant.

(b) *Transfers and diversions to other order plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to an other order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the pool plant from the other order plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in paragraph (b) (1), (2), or (3) of this section:

(1) If transferred as packaged fluid milk products, classification shall be in the classes to which allocated as a fluid milk product under the other order;

(2) If transferred in bulk form, classification shall be in the classes to which allocated under the other order (including allocation under the conditions set forth in paragraph (b) (3) of this section);

(3) If the operators of both plants so request in their reports of receipts and utilization filed with their respective market administrators, transfers or diversions in bulk form shall be classified as Class II or Class III milk to the extent of such utilization available for such classification pursuant to the allocation provisions of the other order;

(4) If information concerning the classes to which such transfers or diversions were allocated under the other order is not available to the market administrator for the purpose of establishing classification under this paragraph, classification shall be as Class I, subject to adjustment when such information is available;

(5) For purposes of this paragraph, if the other order provides for a different number of classes of utilization than is provided for under this part, skim milk or butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I milk, and skim milk or butterfat allocated to the other classes shall be classified as Class III milk; and

(6) If the form in which any fluid milk product that is transferred to an other order plant is not defined as a fluid milk product under such other order, classification under this paragraph shall be in accordance with the provisions of § 1069.40.

(c) *Transfers and diversions to producer-handlers.* Skim milk or butterfat transferred or diverted in the following forms from a pool plant to a producer-handler under this or any other Federal order shall be classified:

(1) As Class I milk, if transferred or diverted in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it by the market administrator, if transferred in the form of a bulk fluid cream product. For this purpose, the producer-handler's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to his receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) *Transfers and diversions to other nonpool plants.* Skim milk or butterfat transferred or diverted in the following forms from a pool plant to a nonpool plant that is not an other order plant or a producer-handler plant shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in paragraphs (d)(2)(i) (*a*) and (*b*) of this section are met, transfers or diversions in bulk form shall be classified on the basis of the assignment of the nonpool plant's utilization to its receipts as set forth in paragraphs (d)(2) (ii) through (viii) of this section:

(*a*) The transferor-handler or diverter-handler claims such classification in his report of receipts and utilization filed pursuant to § 1069.30 for the month within which such transaction occurred; and

(*b*) The nonpool plant operator maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available for verification purposes if requested by the market administrator;

(ii) Route disposition in the marketing area of each Federal milk order from the nonpool plant and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of packaged fluid milk products at such nonpool plant from pool plants;

(*b*) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from other order plants;

(*c*) Pro rata to receipts of bulk fluid milk products at such nonpool plant from pool plants; and

(*d*) Pro rata to any remaining unassigned receipts of bulk fluid milk products at such nonpool plant from other order plants;

(iii) Any remaining Class I disposition of packaged fluid milk products from the nonpool plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from pool plants and other order plants;

(iv) Transfers of bulk fluid milk products from the nonpool plant to a plant fully regulated under any Federal milk order, to the extent that such transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the transferee-plant, shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of fluid milk products at such nonpool plant from pool plants; and

(*b*) Pro rata to any remaining unassigned receipts of fluid milk products at such nonpool plant from other order plants;

(v) Any remaining unassigned Class I disposition from the nonpool plant shall be assigned to the extent possible in the following sequence:

(*a*) To such nonpool plant's receipts from dairy farmers who the market administrator determines constitute regular sources of Grade A milk for such nonpool plant; and

(*b*) To such nonpool plant's receipts of Grade A milk from plants not fully regulated under any Federal milk order which the market administrator determines constitute regular sources of Grade A milk for such nonpool plant;

(vi) Any remaining unassigned receipts of bulk fluid milk products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class I utilization, then to Class III utilization, and then to Class II utilization at such nonpool plant;

(vii) Receipts of bulk fluid cream products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class III utilization, then to any remaining Class II utilization, and then to Class I utilization at such nonpool plant; and

(viii) In determining the nonpool plant's utilization for purposes of this subparagraph, any fluid milk products and bulk fluid cream products transferred from such nonpool plant to a plant not fully regulated under any Federal milk order shall be classified on the basis of the second plant's utilization using the same assignment priorities at the second plant that are set forth in this subparagraph.

§ 1069.43 General classification rules.

In determining the classification of producer milk pursuant to § 1069.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1069.30 and shall compute separately for each pool plant and for each

cooperative association with respect to milk for which it is the handler pursuant to § 1069.9 (b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1069.40, 1069.41, and 1069.42;

(b) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids; and

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1069.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1069.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1069.9(a) for each of his pool plants separately and of each handler described in § 1069.9 (b) and (c) by allocating the handler's receipts of skim milk and butterfat to his utilization as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1069.41 (b);

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products received in packaged form from an other order plant, except that to be subtracted pursuant to paragraph (a) (7) (vi) of this section, as follows:

(i) From Class III milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(4) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 1069.40(b) (1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(5) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1069.40(b) (1) that were in inventory at the beginning of the month in packaged form, but not in excess of the pounds of skim milk remaining in Class II. This subparagraph shall apply only if the pool plant was subject to the provisions of this subparagraph or comparable provisions of another Federal milk order in the immediately preceding month;

(6) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or a fluid cream product) that is used to produce, or added to, any product specified in § 1069.40(b), but not in excess of the pounds of skim milk remaining in Class II;

(7) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Other source milk (except that received in the form of a fluid milk product) and, if paragraph (a) (5) of this section applies, packaged inventory at the beginning of the month of products specified in § 1069.40(b) (1) that was not subtracted pursuant to paragraph (a) (4), (5), and (6) of this section;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established;

(iii) Receipts of fluid milk products from unidentified sources;

(iv) Receipts of fluid milk products from a producer-handler as defined under this or any other Federal milk order;

(v) Receipts of reconstituted skim milk in filled milk from an unregulated supply plant that were not subtracted pursuant to paragraph (a) (2) of this section; and

(vi) Receipts of reconstituted skim milk in filled milk from an other order plant that is regulated under any Federal milk order providing for individual-handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor-plant;

(8) Subtract in the order specified below from the pounds of skim milk remaining in Class II and Class III, in sequence beginning with Class III:

(i) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a) (2) and (7) (v) of this section for which the handler requests a classification other than Class I, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(ii) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a) (2), (7) (v), and (8) (i) of this section which are in excess of the pounds of skim milk determined pursuant to paragraph (a) (8) (ii) (*a*) through (c) of this section. Should the pounds of skim milk to be subtracted from Class II and Class III combined exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount:

(*a*) Multiply by 1.25 the sum of the pounds of skim milk remaining in Class I at this allocation step at all pool plants of the handler (excluding any duplication of Class I utilization resulting from reported Class I transfers between pool plants of the handler);

(*b*) Subtract from the above result the sum of the pounds of skim milk in receipts at all pool plants of the handler of producer milk, milk from a handler described in § 1069.9(c), fluid milk products from pool plants of other handlers, and bulk fluid milk products from other order plants that were not subtracted pursuant to paragraph (a) (7) (vi) of this section; and

(*c*) Multiply any plus quantity resulting above by the percentage that the receipts of skim milk in fluid milk products from unregulated supply plants that remain at this pool plant is of all such receipts remaining at this allocation step at all pool plants of the handler; and

(iii) The pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraph (a) (7) (vi) of this section, if Class II or Class III classification is requested by the operator of the other order plant and the handler, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(9) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 1069.40(b) (1) in inventory at the beginning of the month that were not subtracted pursuant to paragraph (a) (5) and (7) (i) of this section;

(10) Add to the remaining pounds of skim milk in Class III the pounds of skim milk subtracted pursuant to paragraph (a) (1) of this section;

(11) Subject to the provisions of paragraph (a) (11) (i) and (ii) of this section, subtract from the pounds of skim milk remaining in each class at the plant, pro rata to the total pounds of skim milk remaining in Class I and in Class II and Class III combined at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler), with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, the pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted

pursuant to paragraph (a)(2), (7)(v), and 8 (i) and (ii) of this section and that were not offset by transfers or diversions of fluid milk products to the same unregulated supply plant from which fluid milk products to be allocated at this step were received:

(i) Should the pounds of skim milk to be subtracted from Class II and Class III combined pursuant to this subparagraph exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(ii) Should the pounds of skim milk to be subtracted from Class I pursuant to this subparagraph exceed the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount, beginning with the nearest plant at which Class I utilization is available;

(12) Subtract in the manner specified below from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraph (a)(7)(vi) and (8)(iii) of this section:

(i) Subject to the provisions of paragraph (a)(12)(ii), (iii), and (iv) of this section, such subtraction shall be prorata to the pounds of skim milk in Class I and in Class II and Class III combined, with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, with respect to whichever of the following quantities represents the lower proportion of Class I milk:

(*a*) The estimated utilization of skim milk of all handlers in each class as announced for the month pursuant to § 1069.45(a); or

(*b*) The total pounds of skim milk remaining in each class at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler);

(ii) Should the proration pursuant to paragraph (a)(12)(i) of this section result in the total pounds of skim milk at all pool plants of the handler that are to be subtracted at this allocation step from Class II and Class III combined exceeding the pounds of skim milk remaining in Class II and Class III at all such plants, the pounds of such excess shall be subtracted from the pounds of skim milk remaining in Class I after such proration at the pool plants at which such other source milk was received;

(iii) Except as provided in paragraph (a)(12)(ii) of this section, should the computations pursuant to paragraph (a)(12)(i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class II and Class III combined that exceeds the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plant shall be adjusted in the reverse direction by a like amount; and

(iv) Except as provided in paragraph (a)(12)(ii) of this section, should the computations pursuant to paragraph (a)(12)(i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class I that exceeds the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount beginning with the nearest plant at which Class I utilization is available;

(13) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products and bulk fluid cream products from another pool plant according to the classification of such products pursuant to § 1069.42(a); and

(14) If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) The quantity of producer milk in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to paragraph (a)(14) of this section and the corresponding step of paragraph (b) of this section.

§ 1069.45 Market administrator's reports and announcements concerning classification.

The market administrator shall make the following reports and announcements concerning classification:

(a) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1069.44(a)(12) and the corresponding step of § 1069.44(b), estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose.

(b) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from an other order plant, the class to which such receipts are allocated pursuant to § 1069.44 on the basis of such report, and, thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

(c) Furnish to each handler operating a pool plant who has shipped fluid milk products or bulk fluid cream products to an other order plant the class to which such shipments were allocated by the market administrator of the other order on the basis of the report by the receiving handler, and, as necessary, any changes in such allocation arising from the verification of such report.

Class Prices

§ 1069.50 Class prices.

Subject to the provisions of § 1069.52, the class prices for the month per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $1.10.

(b) *Class II price.* The Class II price shall be the basic formula price for the month plus 10 cents.

(c) *Class III price.* The Class III price shall be the basic formula price for the month.

§ 1069.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential (rounded to the nearest 0.1 cent) per 0.1 percent butterfat shall be 0.12 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month. For the purpose of

computing the Class I price, the resulting price shall be not less than $4.33.

§ 1069.52 Plant location adjustments for handlers.

(a) For producer milk which is received at a plant located more than 55 miles by the shortest highway distance, as determined by the market administrator, from the Courthouse at Duluth, Minn., or Ashland, Wis., whichever is closer, and which is classified as Class I milk, the price specified in § 1069.50(a) shall be reduced by 8 cents if such plant is located more than 55 miles but not more than 65 miles from such courthouse and by an additional 1.3 cents for each 10 miles or fraction thereof that such distance exceeds 65 miles.

(b) For the purpose of calculating location adjustments, receipts of fluid milk products from pool plants shall be assigned any remainder of Class I milk at the transferee-plant that is in excess of the sum of producer milk receipts at such plant and that assigned as Class I to receipts from other order plants and unregulated supply plants. Such assignment shall be made first to transferor-plants at which no location adjustment credit is applicable and then in sequence beginning with the plant at which the least location adjustment would apply.

(c) The Class I price applicable to other source milk shall be adjusted at the rates set forth in paragraph (a) of this section, except that the adjusted Class I price shall not be less than the Class III price.

§ 1069.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month and the Class II and Class III prices for the preceding month.

§ 1069.54 Equivalent price.

If for any reason a price or pricing constituent required by this part for computing class prices or for other purposes is not available as prescribed in this part, the market administrator shall use a price or pricing constituent determined by the Secretary to be equivalent to the price or pricing constituent that is required.

UNIFORM PRICE

§ 1069.60 Handler's value of milk for computing uniform price.

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler with respect to each of his pool plants and of each handler described in § 1069.9 (b) and (c) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1069.44 by the applicable class prices and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1069.44(a)(14) and the corresponding step of § 1069.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1069.74, that are applicable at the location of the pool plant;

(c) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the pool plant or the Class II price, as the case may be, for the current month by the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1069.44(a)(9) and the corresponding step of § 1069.44(b);

(d) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1069.44(a)(7) (i) through (iv) and the corresponding step of § 1069.44 (b), excluding receipts of bulk fluid cream products from an other order plant;

(e) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the transferor-plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1069.44(a)(7) (v) and (vi) and the corresponding step of § 1069.44(b); and

(f) Add the amount obtained from multiplying the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1069.44(a)(11) and the corresponding step of § 1069.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

§ 1069.61 Computation of uniform price.

For each month the market administrator shall compute the uniform price per hundredweight of milk of 3.5 percent butterfat content received from producers as follows:

(a) Combine into one total the values computed pursuant to § 1069.60 for all handlers who filed the reports prescribed by § 1069.30 for the month and who made the payments pursuant to §§ 1069.71 and 1069.73 for the preceding month;

(b) Add an amount equal to the total value of the location adjustments computed pursuant to § 1069.75;

(c) Add an amount equal to one-half the unobligated balance in the producer-settlement fund;

(d) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1069.60 (f); and

(e) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the "uniform price".

§ 1069.62 Announcement of uniform price and butterfat differential.

The market administrator shall announce publicly on or before:

(a) The fifth day after the end of each month the butterfat differential for such month; and

(b) The 12th day after the end of each month the uniform price for such month.

PAYMENTS FOR MILK

§ 1069.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to §§ 1069.71, 1069.76, and 1069.77, and out of which he shall make payments to handlers pursuant to §§ 1069.72 and 1069.77: *Provided,* That any payments due to any handler shall be offset by any payments due from such handler.

§ 1069.71 Payments to the producer-settlement fund.

(a) On or before the 15th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the amount specified in paragraph (a)(1) of this section exceeds the amount specified in paragraph (a)(2) of this section:

(1) The total value of milk of the handler for such month as determined pursuant to § 1069.60.

(2) The sum of:

(i) The value at the uniform price, as adjusted pursuant to § 1069.75, of such handler's receipts of producer milk; and

(ii) The value at the uniform price applicable at the location of the plant from which received of other source milk for which a value is computed pursuant to § 1069.60(f).

(b) On or before the 25th day after the end of the month each person who operated an other order plant that was regulated during such month under an order providing for individual-handler pooling shall pay to the market administrator an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk in route disposition from such plant in the marketing area which was allocated to Class I at such plant. If there is such route disposition from such plant in marketing areas regulated by two or more marketwide pool orders, the reconstituted skim milk allocated to Class I shall be prorated to each order according to such route disposition in each marketing area; and

(2) Compute the value of the reconstituted skim milk assigned in paragraph (b)(1) of this section to route disposition in this marketing area by multiplying the quantity of such skim milk by the difference between the Class I price under this part that is applicable at the location of the other order plant (but

not to be less than the Class III price) and the Class III price.

§ 1069.72 Payments from the producer-settlement fund.

On or before the 17th day after the end of each month the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1069.71(a)(2) exceeds the amount computed pursuant to § 1069.71(a)(1). If at such time the balance in the producer-settlement fund is insufficient to make all payments required by this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the appropriate funds are available.

§ 1069.73 Payments to producers and to cooperative associations.

On or before the 20th day after the end of each month, each handler shall make payments as follows:

(a) To each producer from whom milk was received during the month at not less than the uniform price per hundredweight computed pursuant to § 1069.61 subject to the butterfat differential computed pursuant to § 1069.74 and the location adjustment computed pursuant to § 1069.75 and less (1) deductions for marketing services pursuant to § 1069.86, and (2) other proper deductions: *Provided,* That with respect to each deduction for hauling, or for any other purpose, made from such payment, the burden shall rest upon the handler making the deduction to prove that each deduction is authorized, and properly chargeable to the producer: *And provided further,* That if by such date such handler has not received full payment from the market administrator pursuant to § 1069.72, he may reduce pro rata his payment to producers by not more than the amount of such underpayment. Payment to producers shall be completed thereafter not later than the date for making payment pursuant to this paragraph next following after receipt of the balance due from the market administrator;

(b) A handler who has not received on the 20th day after the end of each month the balance of the payments due him from the market administrator shall not be deemed to be in violation of paragraph (a) of this section if he reduced his payments to producers by not more than the amount of the reduction payment from the producer-settlement fund. The handler shall, however, complete such payments not later than the date for making such payments next following receipt of the balance from the market administrator; and

(c) On or before the 15th day after the end of each month, to each cooperative association with respect to receipts of milk for which such cooperative association is defined as the handler not less than the value of such milk at the class prices, as adjusted by the butterfat differential specified in § 1069.74, that are applicable at the location of the receiving handler's pool plant.

§ 1069.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a 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.

§ 1069.75 Plant location adjustments for producers and on nonpool milk.

(a) For milk which is received at a pool plant located more than 55 miles but not more than 65 miles by shortest highway distance, as determined by the market administrator, from the courthouse at Duluth, Minn., or at Ashland, Wis., whichever is closer, there should be deducted 8 cents per hundredweight and an additional 1.3 cents should be deducted for each 10 miles or fraction thereof that such distance exceeds 65 miles; and

(b) For purposes of computations pursuant to §§ 1069.71 and 1069.72 the uniform price shall be adjusted at the rates set forth in § 1069.52 applicable at the location of the nonpool plant from which the milk was received, except that the adjusted uniform price shall not be less than the Class III price.

§ 1069.76 Payments by handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay on or before the 25th day after the end of the month to the market administrator for the producer-settlement fund the amount computed pursuant to paragraph (a) of this section. If the handler submits pursuant to §§ 1069.30(b) and 1069.31(b) the information necessary for making the computations, such handler may elect to pay in lieu of such payment the amount computed pursuant to paragraph (b) of this section:

(a) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the pounds of route disposition in the marketing area from the partially regulated distributing plant;

(2) Subtract the pounds of fluid milk products received at the partially regulated distributing plant:

(i) As Class I milk from pool plants and other order plants, except that subtracted under a similar provision of another Federal milk order; and

(ii) From another nonpool plant that is not an other order plant to the extent that an equivalent amount of fluid milk products disposed of to such nonpool plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract the pounds of reconstituted skim milk in route disposition in the marketing area from the partially regulated distributing plant;

(4) Multiply the remaining pounds by the difference between the Class I price and the uniform price, both prices to be applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price); and

(5) Add the amount obtained from multiplying the pounds of reconstituted skim milk specified in paragraph (a)(3) of this section by the difference between the Class I price applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price) and the Class III price.

(b) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the value that would have been computed pursuant to § 1069.60 for the partially regulated distributing plant if the plant had been a pool plant, subject to the following modifications:

(i) Fluid milk products and bulk fluid cream products received at the partially regulated distributing plant from a pool plant or an other order plant shall be allocated at the partially regulated distributing plant to the same class in which such products were classified at the fully regulated plant;

(ii) Fluid milk products and bulk fluid cream products transferred from the partially regulated distributing plant to a pool plant or an other order plant shall be classified at the partially regulated distributing plant in the class to which allocated at the fully regulated plant. Such transfers shall be allocated to the extent possible to those receipts at the partially regulated distributing plant from pool plants and other order plants that are classified in the corresponding class pursuant to paragraph (b)(1)(i) of this section. Any such transfers remaining after the above allocation which are classified in Class I and for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1069.60 shall be priced at the uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee-plant, with such uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

(iii) If the operator of the partially regulated distributing plant so requests, the value of milk determined pursuant to § 1069.60 for such handler shall include, in lieu of the value of other source milk specified in § 1069.60(f) less the value of such other source milk specified in § 1069.71(a)(2)(ii), a value of milk determined pursuant to § 1069.60 for each nonpool plant that is not an other order plant which serves as a supply plant for such partially regulated distributing

plant by making shipments to the partially regulated distributing plant during the month equivalent to the requirements of § 1069.7(b), subject to the following conditions:

(a) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1069.30 (b) and 1069.31(b) similar reports for each such nonpool supply plant;

(b) The operator of such nonpool supply plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for verification purposes; and

(c) The value of milk determined pursuant to § 1069.60 for such nonpool supply plant shall be determined in the same manner prescribed for computing the obligation of such partially regulated distributing plant; and

(2) From the partially regulated distributing plant's value of milk computed pursuant to paragraph (b)(1) of this section, subtract:

(i) The gross payments by the operator of such partially regulated distributing plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1069.74 for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated;

(ii) If paragraph (b)(1)(iii) of this section applies, the gross payments by the operator of such nonpool supply plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1069.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated; and

(iii) The payments by the operator of the partially regulated distributing plant to the producer-settlement fund of another order under which such plant is also a partially regulated distributing plant and like payments by the operator of the nonpool supply plant if paragraph (b)(1)(iii) of this section applies.

§ 1069.77 Adjustment of accounts.

Whenever audit by the market administrator of any handler's reports, books, records, or accounts discloses errors resulting in moneys due (a) the market administrator from such handler, (b) such handler from the market administrator, or (c) any producer or cooperative association from such handler, the market administrator shall promptly notify such handler of any amount due and payment thereof shall be made on or before the next date for making payments set forth in the provision under which such error occurred.

Administrative Assessment and Marketing Service Deduction

§ 1069.85 Assessment for order administration.

As his pro rata share of the expense of administration of the order, each handler shall pay to the market administrator on or before the 15th day after the end of the month 4 cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to:

(a) Producer milk (including such handler's own production);

(b) Other source milk allocated to Class I pursuant to § 1069.44(a) (7) and (11) and the corresponding steps of § 1069.44(b), except such other source milk that is excluded from the computations pursuant to § 1069.60 (d) and (f); and

(c) Class I milk disposed of in the marketing area from a partially regulated distributing plant that exceeds the skim milk and butterfat subtracted pursuant to § 1069.76(a)(2).

§ 1069.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler, in making payments to producers pursuant to § 1069.73, with respect to all milk received from each producer at a plant not operated by a cooperative association qualified under paragraph (b) of this section of which such producer is a member, shall deduct an amount not exceeding 3 cents per hundredweight (the exact amount to be determined by the market administrator subject to review by the Secretary) from the payments made direct to such producers and such handler shall pay such deductions to the market administrator on or before the 15th day after the end of such month. Such moneys shall be used by the market administrator to provide market information and to verify the accuracy of weights, sampling and testing of milk received from such producers.

(b) In the case of milk of producers who are members of a cooperative association which is actually performing the services described in paragraph (a) of this section, which is received at a plant not operated by such cooperative association, each handler shall make, in lieu of the deductions specified in paragraph (a) of this section, such deductions from the payments to be made direct to such producers pursuant to § 1069.73, as are authorized by such producers and, on or before the 15th day after the end of such month, pay such deductions to such cooperative association.

PART 1070—MILK IN THE CEDAR RAPIDS-IOWA CITY MARKETING AREA

Subpart—Order Regulating Handling

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1070.86 Deduction for marketing services.

Authority: Secs. 1–19, 48 Stat. 31, as amended (7 U.S.C. 601–674).

Subpart—Order Regulating Handling

General Provisions

§ 1070.1 General provisions.

The terms, definitions, and provisions in Part 1000 of this chapter are hereby incorporated by reference and made a part of this order.

Definitions

§ 1070.2 Cedar Rapids-Iowa City marketing area.

"Cedar Rapids-Iowa City marketing area", called the "marketing area" in this part, means all the territory within the corporate limits of the cities of Cedar Rapids and Iowa City, both in the State of Iowa.

§ 1070.3 [Reserved]

§ 1070.4 [Reserved]

§ 1070.5 Distributing plant.

"Distributing plant" means a plant in which any Grade A fluid milk product is processed or packaged and disposed of during the month on routes (including routes operated by vendors) or through plant stores to retail or wholesale outlets (except pool plants) located in the marketing area.

§ 1070.6 Supply plant.

"Supply plant" means a plant from which Grade A milk or skim milk is shipped during the month to a pool plant qualified pursuant to § 1070.7.

§ 1070.7 Pool plant.

Except as provided in paragraph (e) of this section, "pool plant" means:

(a) A distributing plant from which a volume of Class I milk, except filled milk, equal to not less than 35 percent of the Grade A milk received at such plant from dairy farmers and from other plants is disposed of during the month on routes (including routes operated by vendors) or through plant stores to retail or wholesale outlets (except pool plants) and not less than 15 percent of such receipts are so disposed of to such outlets in the marketing area.

(b) A supply plant from which the volume of fluid milk products, except filled milk, shipped during the month to pool plants qualified pursuant to paragraph (a) of this section is not less than 35 percent of the Grade A milk received at such plant from dairy farmers during such month: *Provided*, That if such shipments are not less than 50 percent of the receipts of Grade A milk at such plant during the immediately preceding period of September through November, such plant may, upon written application to the market administrator on or before March 1 of any year, be designated as a pool plant for the months of March through June of such year.

(c) A plant (1) which is approved by a duly constituted health authority for the handling of Grade A milk; (2) which is operated by a cooperative association; and (3) from which the milk transferred by the association to plants of other handlers specified in paragraph (a) of this section plus that delivered by such association pursuant to paragraph (d) of this section and that delivered directly from the farms of members of such association to such plants is Grade A milk delivered by producers who are members of the association. If written application is filed with the market administrator on or before the 5th day of any month, such plant may be designated a nonpool plant for such month and for any subsequent months, except as provided in paragraph (e) of this section.

(d) A cooperative association with respect to Grade A milk received from dairy farmers at their farms in a tank truck owned or operated by such cooperative association and delivered in such tank truck to a pool plant: *Provided*, That such milk shall be deemed to have been received by the cooperative association at the location of the pool plant to which it is delivered by the tank truck and such location shall be deemed to be the location of such cooperative association in its capacity as the operator of a pool plant.

(e) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant; and

(2) A plant specified in paragraph (a), (b), (c), or (d) of this section during any month in which such plant would be subject to the classification and pricing provisions of another order issued pursuant to the act unless the disposition of fluid milk products, except filled milk, from such plant to pool plants qualified under this section and to retail and wholesale outlets in the Cedar Rapids-Iowa City marketing area exceeds such disposition to retail and wholesale outlets in such other marketing area and to pool plants regulated by such other order.

§ 1070.8 Nonpool plant.

"Nonpool plant" means any milk or filled milk receiving, manufacturing, or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant, from which fluid milk products in consumer-type packages or dispenser units are distributed on routes in the marketing area during the month.

(d) "Unregulated supply plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant from which fluid milk products are shipped during the month to a pool plant.

§ 1070.9 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of one or more pool plants;

(b) A cooperative association with respect to producer milk diverted by the association for its account pursuant to § 1070.13;

(c) [Reserved]

(d) Any person who operates a partially regulated distributing plant;

(e) A producer-handler; and

(f) Any person who operates an other order plant described in § 1070.7(e).

§ 1070.10 Producer-handler.

"Producer-handler" means any person who operates a dairy farm and a distributing plant but who receives no milk from other dairy farmers or from a cooperative association in its capacity as the operator of a pool plant pursuant to § 1070.7(d) and whose disposition of fluid milk products does not exceed that (a) received from a pool plant, (b) processed from milk of his own production, or (c) processed from fluid milk products received from a pool plant.

§ 1070.11 [Reserved]

§ 1070.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk in compliance with the Grade A inspection requirements of a duly constituted health authority, and whose milk is received at a pool plant.

(b) "Producer" shall not include:

(1) A producer-handler as defined in any order (including this part) issued pursuant to the Act;

(2) Any person with respect to milk produced by him which is diverted to a pool plant from an other order plant if the other order designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to § 1070.44(a)(8)(iii) and the corresponding step of § 1070.44(b); and

(3) Any person with respect to milk produced by him which is reported as diverted to an other order plant if any portion of such person's milk so moved is assigned to Class I under the provisions of such other order.

§ 1070.13 Producer milk.

"Producer milk" means all skim milk and butterfat produced by producers which is:

(a) Received at a pool plant directly from producers; or

(b) Diverted from a pool plant to a nonpool plant that is not a producer-handler plant for the account of the operator of a pool plant or a cooperative association, subject to the following:

(1) Such diversions may be without limit during the months of April through August, but not be for more than 25 days' production of any producer during any other month and milk diverted in excess of this limit shall not be producer milk;

(2) Milk so diverted for the account of the operator of a pool plant shall be deemed to have been received at the plant from which diverted; and

(3) Milk so diverted from the plant of another handler for the account of a cooperative association shall be priced at the location of the plant from which diverted.

§ 1070.14 Other source milk.

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk products specified in § 1070.40(b)(1) from any source other than producers, or pool plants;

(b) Receipts in packaged form from other plants of products specified in § 1070.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1070.40

(b)(1), and products produced at the plant during the same month) from any source which are reprocessed, converted into, or combined with another product in the plant during the month; and

(d) Receipts of any milk product (other than a fluid milk product or a product specified in § 1070.40(b)(1)) for which the handler fails to establish a disposition.

§ 1070.15 Fluid milk product.

(a) Except as provided in paragraph (b) of this section, "fluid milk product" means any of the following products in fluid or frozen form:

(1) Milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted; and

(2) Any milk product not specified in paragraph (a)(1) of this section or in § 1070.40(b) or (c)(1)(i) through (v) if it contains by weight at least 80 percent water and 6.5 percent nonfat milk solids and less than 9 percent butterfat and 20 percent total solids.

(b) The term "fluid milk product" shall not include:

(1) Evaporated or condensed milk (plain or sweetened), evaporated or condensed skim milk (plain or sweetened), formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, any product that contains by weight less than 6.5 percent nonfat milk solids, and whey; and

(2) The quantity of skim milk in any modified product specified in paragraph (a) of this section that is in excess of the quantity of skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

§ 1070.16 Fluid cream product.

"Fluid cream product" means cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

§ 1070.17 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted, or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid milk product, and contains less than 6 percent nonmilk fat (or oil).

§ 1070.18 Cooperative association.

"Cooperative association" means any cooperative marketing association which the Secretary determines, after application by the association:

(a) To be qualified under the provisions of the act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act"; and

(b) To have full authority in the sale of milk of its members and to be engaged in making collective sales of or marketing milk or its products for its members.

HANDLER REPORTS

§ 1070.30 Reports of receipts and utilization.

On or before the 7th day after the end of each month, each handler shall report for such month to the market administrator, in the detail and on the forms prescribed by the market administrator, as follows:

(a) Each handler, with respect to each of his pool plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the handler from the pool plant to other plants;

(2) [Reserved]

(3) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1070.40(b)(1); and

(6) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. Such report shall show also the quantity of any reconstituted skim milk in route disposition of fluid milk products in the marketing area.

(c) Each handler described in § 1070.9(b) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers; and

(2) The utilization or disposition of all such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to his receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

§ 1070.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1070.9 (a) and (b) shall report to the market administrator his producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer:

(1) His name and address;

(2) The total pounds of milk received from such producer;

(3) The average butterfat content of such milk; and

(4) The price per hundredweight, the gross amount due, the amount and nature of any deductions, and the net amount paid.

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1070.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1070.32 Other reports.

In addition to the reports required pursuant to §§ 1070.30 and 1070.31, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligation under the order.

CLASSIFICATION OF MILK

§ 1070.40 Classes of utilization.

Except as provided in § 1070.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1070.30 shall be classified as follows:

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product, except as otherwise provided in paragraphs (b) and (c) of this section; and

(2) Not specifically accounted for as Class II or Class III milk.

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid cream product, eggnog, yogurt, and any product containing 6 percent or more nonmilk fat (or oil) that resembles a fluid cream product, eggnog, or yogurt, except as otherwise provided in paragraph (c) of this section;

(2) In packaged inventory at the end of the month of the products specified in paragraph (b)(1) of this section;

(3) In bulk fluid milk products and bulk fluid cream products disposed of to any commercial food processing establishment (other than a milk or filled milk plant) at which food products (other than milk products and filled milk) are processed and from which there is no disposition of fluid milk products or fluid cream products other than those received in consumer-type packages; and

(4) Used to produce:

(i) Cottage cheese, lowfat cottage cheese, and dry curd cottage cheese;

(ii) Milkshake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts, and frozen dessert mixes;

(iii) Any concentrated milk product in bulk, fluid form other than that specified in paragraph (c)(1)(iv) of this section;

(iv) Plastic cream, frozen cream, and anhydrous milkfat;

(v) Custards, puddings, and pancake mixes; and

(vi) Formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers.

(c) *Class III milk.* Class III milk shall be all skim milk and butterfat:

(1) Used to produce:

(i) Cheese (other than cottage cheese, lowfat cottage cheese, and dry curd cottage cheese);

(ii) Butter;

(iii) Any milk product in dry form;

(iv) Any concentrated milk product in bulk, fluid form that is used to produce a Class III product;

(v) Evaporated or condensed milk (plain or sweetened) in a consumer-type package and evaporated or condensed skim milk (plain or sweetened) in a consumer-type package; and

(vi) Any product not otherwise specified in this section;

(2) In inventory at the end of the month of fluid milk products in bulk or packaged form and products specified in paragraph (b)(1) of this section in bulk form;

(3) In fluid milk products and products specified in paragraph (b)(1) of this section that are dumped by a handler if for animal feed;

(4) In fluid milk products and products specified in paragraph (b)(1) of this section that are dumped by a handler if the market administrator is notified of such dumping in advance and is given the opportunity to verify such disposition;

(5) In skim milk in any modified fluid milk product that is in excess of the quantity of skim milk in such product that was included within the fluid milk product definition pursuant to § 1070.15; and

(6) In shrinkage assigned pursuant to § 1070.41(a) to the receipts specified in § 1070.41(a)(2) and in shrinkage specified in § 1070.41 (b) and (c).

§ 1070.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1070.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraph (b) (1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) In other source milk not specified in paragraph (b) (1) through (6) of this section which was received in the form of a bulk fluid milk product or a bulk fluid cream product;

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in paragraph (a)(1) of this section that is not in excess of:

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant);

(2) [Reserved]

(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer milk diverted from such plant by the plant operator to another plant, except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be zero;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other pool plants;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other order plants, excluding the quantity for which Class II or Class III classification is requested by the operators of both plants;

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received from unregulated supply plants, excluding the quantity for which Class II or Class III classification is requested by the handler; and

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products transferred to other plants that is not in excess of the respective amounts of skim milk and butterfat to which percentages are applied in paragraph (b) (1), (4), (5), and (6) of this section; and

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1070.9(b), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

§ 1070.42 Classification of transfers and diversions.

(a) *Transfers to pool plants.* Skim milk or butterfat transferred in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant shall be classified as Class I milk unless the operators of both plants request the same classification in another class. In either case, the classification of such transfers shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant after the computations pursuant to § 1070.44(a)(12) and the corresponding step of § 1070.44(b);

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1070.44(a)(7) or the corresponding step of § 1070.44(b), the skim milk or butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor-handler received during the month other source milk to be allocated pursuant to § 1070.44(a)(11) or (12) or the corresponding steps of § 1070.44(b), the skim milk or butterfat so transferred, up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant.

(b) *Transfers or diversions to other order plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to an other order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the pool plant from the other order plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in paragraph (b) (1), (2), or (3) of this section:

(1) If transferred as packaged fluid milk products, classification shall be in the classes to which allocated as a fluid milk product under the other order;

(2) If transferred in bulk form, classification shall be in the classes to which allocated under the other order (including allocation under the conditions set forth in paragraph (b)(3) of this section);

(3) If the operators of both plants so request in their reports of receipts and utilization filed with their respective market administrators, transfers or diversions in bulk form shall be classified as Class II or Class III milk to the extent of such utilization available for such classification pursuant to the allocation provisions of the other order;

(4) If information concerning the classes to which such transfers or diversions were allocated under the other order is not available to the market administrator for the purpose of establishing classification under this paragraph, classification shall be as Class I, subject to adjustment when such information is available;

(5) For purposes of this paragraph, if the other order provides for a different number of classes of utilization than is provided for under this part, skim milk or butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I milk, and skim milk or butterfat allocated to the other classes shall be classified as Class III milk; and

(6) If the form in which any fluid milk product that is transferred to an other order plant is not defined as a fluid milk product under such other order, classification under this paragraph shall be in accordance with the provisions of § 1070.40.

(c) *Transfers to producer-handlers.* Skim milk or butterfat transferred in the following forms from a pool plant to a producer-handler under this or any other Federal order shall be classified:

(1) As Class I milk, if transferred in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it by the market administrator, if transferred in the form of a bulk fluid cream product. For this purpose, the producer-handler's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to his receipts of skim milk and butterfat,

respectively, in bulk fluid cream products, pro rata to each source.

(d) *Transfers and diversions to other nonpool plants.* Skim milk or butterfat transferred or diverted in the following forms from a pool plant to a nonpool plant that is not an other order plant or a producer-handler plant shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in paragraph (d)(2)(i) (*a*) and (*b*) of this section are met, transfers or diversions in bulk form shall be classified on the basis of the assignment of the nonpool plant's utilization to its receipts as set forth in paragraph (d)(2) (ii) through (viii) of this section:

(*a*) The transferor-handler or diverter-handler claims such classification in his report of receipts and utilization filed pursuant to § 1070.30 for the month within which such transaction occurred; and

(*b*) The nonpool plant operator maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available for verification purposes if requested by the market administrator;

(ii) Route disposition of fluid milk products in the marketing area of each Federal milk order from the nonpool plant and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of packaged fluid milk products at such nonpool plant from pool plants;

(*b*) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from other order plants;

(*c*) Pro rata to receipts of bulk fluid milk products at such nonpool plant from pool plants; and

(*d*) Pro rata to any remaining unassigned receipts of bulk fluid milk products at such nonpool plant from other order plants;

(iii) Any remaining Class I disposition of packaged fluid milk products from the nonpool plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from pool plants and other order plants;

(iv) Transfers of bulk fluid milk products from the nonpool plant to a plant fully regulated under any Federal milk order, to the extent that such transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the transferee-plant, shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of fluid milk products at such nonpool plant from pool plants; and

(*b*) Pro rata to any remaining unassigned receipts of fluid milk products at such nonpool plant from other order plants;

(v) Any remaining unassigned Class I disposition from the nonpool plant shall be assigned to the extent possible in the following sequence:

(*a*) To such nonpool plant's receipts from dairy farmers who the market administrator determines constitute regular sources of Grade A milk for such nonpool plant; and

(*b*) To such nonpool plant's receipts of Grade A milk from plants not fully regulated under any Federal milk order which the market administrator determines constitute regular sources of Grade A milk for such nonpool plant;

(vi) Any remaining unassigned receipts of bulk fluid milk products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possbile first to any remaining Class I utilization, then to Class III utilization, and then to Class II utilization at such nonpool plant;

(vii) Receipts of bulk fluid cream products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class III utilization, then to any remaining Class II utilization, and then to Class I utilization at such nonpool plant; and

(viii) In determining the nonpool plant's utilization for purposes of this subparagraph, any fluid milk products and bulk fluid cream products transferred from such nonpool plant to a plant not fully regulated under any Federal milk order shall be classified on the basis of the second plant's utilization using the same assignment priorities at the second plant that are set forth in this subparagraph.

§ 1070.43 General classification rules.

In determining the classification of producer milk pursuant to § 1070.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1070.30 and shall compute separately for each pool plant and for each cooperative association with respect to milk for which it is the handler pursuant to § 1070.9(b) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1070.40, 1070.41, and 1070.42;

(b) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids; and

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1070.9(b) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1070.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1070.9(a) for each of his pool plants separately and of each handler described in § 1070.9(b) by allocating the handler's receipts of skim milk and butterfat to his utilization as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1070.41(b);

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products received in packaged form from an other order plant, except that to be subtracted pursuant to paragraph (a)(7)(vi) of this section, as follows:

(i) From Class III milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(4) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 1070.40(b)(1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(5) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1070.40(b)(1) that were in inventory at the beginning of the month in packaged form, but not in excess of the pounds of skim milk remaining in Class II. This subparagraph shall apply only if the pool plant was subject to the provisions of this subparagraph or comparable provisions of another Federal milk order in the immediately preceding month;

(6) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or a fluid cream product) that is used to produce, or added to, any product specified in § 1070.40(b), but not in excess of the pounds of skim milk remaining in Class II;

(7) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Other source milk (except that received in the form of a fluid milk product) and, if paragraph (a)(5) of this

section applies, packaged inventory at the beginning of the month of products specified in § 1070.40(b)(1) that was not subtracted pursuant to paragraph (a)(4), (5), and (6) of this section;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established;

(iii) Receipts of fluid milk products from unidentified sources;

(iv) Receipts of fluid milk products from a producer-handler as defined under this or any other Federal milk order;

(v) Receipts of reconstituted skim milk in filled milk from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2) of this section; and

(vi) Receipts of reconstituted skim milk in filled milk from an other order plant that is regulated under any Federal milk order providing for individual-handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor-plant;

(8) Subtract in the order specified below from the pounds of skim milk remaining in Class II and Class III, in sequence beginning with Class III:

(i) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2) and (7)(v) of this section for which the handler requests a classification other than Class I, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(ii) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2), (7)(v), and (8)(i) of this section which are in excess of the pounds of skim milk determined pursuant to paragraph (a)(8)(ii) (*a*) through (*c*) of this section. Should the pounds of skim milk to be subtracted from Class II and Class III combined exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount:

(*a*) Multiply by 1.25 the sum of the pounds of skim milk remaining in Class I at this allocation step at all pool plants of the handler (excluding any duplication of Class I utilization resulting from reported Class I transfers between pool plants of the handler);

(*b*) Subtract from the above result the sum of the pounds of skim milk in receipts at all pool plants of the handler of producer milk, fluid milk products from pool plants of other handlers, and bulk fluid milk products from other order plants that were not subtracted pursuant to paragraph (a)(7)(vi) of this section; and

(*c*) Multiply any plus quantity resulting above by the percentage that the receipts of skim milk in fluid milk products from unregulated supply plants that remain at this pool plant is of all such receipts remaining at this allocation step at all pool plants of the handler; and

(iii) The pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraph (a)(7)(vi) of this section, if Class II or Class III classification is requested by the operator of the other order plant and the handler, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(9) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 1070.40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to paragraph (a)(5) and (7)(i) of this section;

(10) Add to the remaining pounds of skim milk in Class III the pounds of skim milk subtracted pursuant to paragraph (a)(1) of this section;

(11) Subject to the provisions of paragraph (a)(11)(i) and (ii) of this section, subtract from the pounds of skim milk remaining in each class at the plant, pro rata to the total pounds of skim milk remaining in Class I and in Class II and Class III combined at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler), with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, the pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2), (7)(v), and (8)(i) and (ii) of this section and that were not offset by transfers or diversions of fluid milk products to the same unregulated supply plant from which fluid products to be allocated at this step were received:

(i) Should the pounds of skim milk to be subtracted from Class II and Class III combined pursuant to this 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 § 1070.45(a); or

(*b*) The total pounds of skim milk remaining in each class at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler);

(ii) Should the proration pursuant to paragraph (a)(12)(i) of this section result in the total pounds of skim milk at all pool plants of the handler that are to be subtracted at this allocation step from Class II and Class III combined exceeding the pounds of skim milk remaining in Class II and Class III at all such plants, the pounds of such excess shall be subtracted from the pounds of skim milk remaining in Class I after such proration at the pool plants at which such other source milk was received;

(iii) Except as provided in paragraph (a)(12)(ii) of this section, should the computations pursuant to paragraph (a)(12)(i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class II and Class III combined that exceeds the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the

handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(iv) Except as provided in paragraph (a)(12)(ii) of this section, should the computations pursuant to paragraph (a)(12) (i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class I that exceeds the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount beginning with the nearest plant at which Class I utilization is available;

(13) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products and bulk fluid cream products from another pool plant according to the classification of such products pursuant to § 1070.42(a); and

(14) If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) The quantity of producer milk in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to paragraph (a)(14) of this section and the corresponding step of paragraph (b) of this section.

§ 1070.45 Market administrator's reports and announcements concerning classification.

The market administrator shall make the following reports and announcements concerning classification:

(a) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1070.44(a)(12) and the corresponding step of § 1070.44(b), estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose.

(b) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from an other order plant, the class to which such receipts are allocated pursuant to § 1070.44 on the basis of such report, and, thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

(c) Furnish to each handler operating a pool plant who has shipped fluid milk products or bulk fluid cream products to an other order plant the class to which such shipments were allocated by the market administrator of the other order on the basis of the report by the receiving handler, and, as necessary, any changes in such allocation arising from the verification of such report.

(d) On or before the 10th day after the end of each month, report to each cooperative association which so requests, the percentage of the milk caused to be delivered by the cooperative association or its members to the pool plant(s) of each handler during the month, which was utilized in each class. For the purpose of this report, the milk so delivered shall be allocated to each class for each handler in the same ratio as all producer milk received by such handler during the month.

Class Prices

§ 1070.50 Class prices.

Subject to the provisions of § 1070.52, the class prices for the month per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $1.33.

(b) *Class II price.* The Class II price shall be the basic formula price for the month plus 10 cents.

(c) *Class III price.* The Class III price shall be the basic formula price for the month.

§ 1070.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential (rounded to the nearest one-tenth cent) per one-tenth percent butterfat shall be 0.12 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month. For the purpose of computing the Class I price, the resulting price shall be not less than $4.33.

§ 1070.52 Plant location adjustments for handlers.

(a) For milk received from producers at a pool plant located 50 miles or more by shortest hard-surfaced highway distance as measured by the market administrator, from the nearer of the City Halls in Cedar Rapids and Iowa City, Iowa, and disposed of as Class I milk or assigned Class I location adjustment credit pursuant to paragraph (b) of this section, the price computed pursuant to § 1070.50(a) shall be reduced by 10 cents, plus 1.5 cents for each 10 miles or fraction thereof that such distance exceeds 65 miles.

(b) For purposes of calculating such adjustment, transfers between pool plants shall be assigned to Class I utilization remaining at the transferee-plant after computations pursuant to § 1070.44(a)(12) and the corresponding step of § 1070.44(b) which is in excess of 95 percent of receipts at such plant from producers, such assignment to be made first to transferor-plants at which no location adjustment credit is applicable and then in sequence beginning with the plant at which the least location adjustment would apply.

(c) The Class I price applicable to other source milk shall be adjusted at the rates set forth in paragraph (a) of this section, except that the adjusted Class I price shall not be less than the Class III price.

§ 1070.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month and the Class II and Class III prices for the preceding month.

§ 1070.54 Equivalent price.

If for any reason a price or pricing constituent required by this part for computing class prices or for other purposes is not available as prescribed in this part, the market administrator shall use a price or pricing constituent determined by the Secretary to be equivalent to the price or pricing constituent that is required.

Uniform Price

§ 1070.60 Handler's value of milk for computing uniform price.

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler with respect to each of his pool plants and of each handler described in § 1070.9(b) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1070.44 by the applicable class prices and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1070.44(a)(14) and the corresponding step of § 1070.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1070.74, that are applicable at the location of the pool plant;

(c) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the pool plant or the Class II price, as the case may be, for the current month by the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1070.44(a)(9) and the corresponding step of § 1070.44(b);

(d) Add the amount obtained from multiplying the difference between the

Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1070.44(a)(7) (i) through (iv) and the corresponding step of § 1070.44 (b), excluding receipts of bulk fluid cream products from an other order plant;

(e) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the transferor-plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1070.44(a)(7) (v) and (vi) and the corresponding step of § 1070.44 (b); and

(f) Add the amount obtained from multiplying the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1070.44(a)(11) and the corresponding step of § 1070.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

§ 1070.61 Computation of uniform price.

For each month the market administrator shall compute a uniform price for producer milk of 3.5 percent butterfat content f.o.b. pool plants located within 50 miles of the city hall of Cedar Rapids or Iowa City, Iowa, as follows:

(a) Combine into one total the values computed pursuant to § 1070.60 for all handlers who filed the reports prescribed by § 1070.30 for the month and who made the payments pursuant to § 1070.71 for the preceding month;

(b) Add an amount equal to the total value of the location adjustments computed pursuant to § 1070.75;

(c) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(d) Divide the resulting amount by the sum of the following for all handlers included in these computations;

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1070.60(f); and

(e) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the "uniform price" for milk received from producers.

§ 1070.62 Announcement of uniform price and butterfat differential.

The market administrator shall announce publicly on or before:

(a) The fifth day after the end of each month the butterfat differential for such month; and

(b) The 10th day after the end of each month the uniform price for such month.

Payments for Milk

§ 1070.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to §§ 1070.71, 1070.76, and 1070.77, and out of which he shall make all payments to handlers pursuant to §§ 1070.72 and 1070.77.

§ 1070.71 Payments to the producer-settlement fund.

(a) On or before the 12th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the amount specified in paragraph (a)(1) of this section exceeds the amount specified in paragraph (a)(2) of this section:

(1) The total value of milk of the handler for such month as determined pursuant to § 1070.60.

(2) The sum of:

(i) The value at the uniform price, as adjusted pursuant to § 1070.75, of such handler's receipts of producer milk; and

(ii) The value at the uniform price applicable at the location of the plant from which received of other source milk for which a value is computed pursuant to § 1070.60(f).

(b) On or before the 25th day after the end of the month each person who operated an other order plant that was regulated during such month under an order providing for individual-handler pooling shall pay to the market administrator an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk in route disposition from such plant in the marketing area which was allocated to Class I at such plant. If there is such route disposition from such plant in marketing areas regulated by two or more 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.

§ 1070.72 Payments from the producer-settlement fund.

On or before the 12th day after the end of each month the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1070.71(a)(2) exceeds the amount computed pursuant to § 1070.71(a)(1): *Provided*, That if the balance in the producer-settlement fund is insufficient to make all payments pursuant to this paragraph, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the necessary funds are available. A handler who has not received the balance of such payments from the market administrator shall not be considered in violation of § 1070.73 if he reduces his payments to producers by not more than the amount of the reduction in payment from the producer-settlement fund.

§ 1070.73 Payments to producers and to cooperative associations.

Each handler shall make payment as follows:

(a) On or before the 15th day after the end of each month during which the milk was received, to each producer for milk received from him and for which payment is not made to a cooperative association pursuant to paragraph (b) of this section, at not less than the uniform price computed in accordance with § 1070.61, subject to the butterfat differential computed pursuant to § 1070.74 and less location adjustments pursuant to § 1070.75.

(b) On or before the 12th day after the end of each month during which the milk was received, to a cooperative association for milk which it caused to be delivered to such handler from producers, if such cooperative association is authorized to collect such payments for its member producers and exercises such authority, an amount equal to the sum of the individual payments otherwise payable to such producers.

(c) On or before the 11th day after the end of each month during which milk was received at a pool plant from a cooperative association in its capacity as the operator of a pool plant pursuant to § 1070.7(d), at not less than the class prices for such milk, as adjusted by the butterfat differential specified in § 1070.74, that are applicable at the location of the receiving handler's pool plant, plus an amount equal to that payable on the same quantity of producer milk pursuant to § 1070.85.

§ 1070.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.115 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month.

§ 1070.75 Plant location adjustments for producers and on nonpool milk.

(a) The uniform price for producer milk received at a pool plant shall be reduced according to the location of the pool plant, at the rates set forth in § 1070.52; and

(b) For purposes of computations pursuant to §§ 1070.71 and 1070.72 the uniform price shall be adjusted at the rates set forth in § 1070.52 applicable at the location of the nonpool plant from which the milk was received, except that the adjusted uniform price shall not be less than the Class III price.

§ 1070.76 Payments by handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay on or before the 25th day after the end of the month to the market administrator for the producer-settlement fund the amount computed pursuant to paragraph (a) of this section. If the handler submits pursuant to §§ 1070.30(b) and 1070.31(b) the information necessary for making the computations, such handler may elect to pay in lieu of such payment the amount computed pursuant to paragraph (b) of this section:

(a) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the pounds of route disposition of fluid milk products in the marketing area from the partially regulated distributing plant;

(2) Subtract the pounds of fluid milk products received at the partially regulated distributing plant:

(i) As Class I milk from pool plants and other order plants, except that subtracted under a similar provision of another Federal milk order; and

(ii) From another nonpool plant that is not an other order plant to the extent that an equivalent amount of fluid milk products disposed of to such nonpool plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract the pounds of reconstituted skim milk in route disposition of fluid milk products in the marketing area from the partially regulated distributing plant;

(4) Multiply the remaining pounds by the difference between the Class I price and the uniform price, both prices to be applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price); and

(5) Add the amount obtained from multiplying the pounds of reconstituted skim milk specified in paragraph (a)(3) of this section by the difference between the Class I price applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price) and the Class III price.

(b) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the value that would have been computed pursuant to § 1070.60 for the partially regulated distributing plant if the plant had been a pool plant, subject to the following modifications:

(i) Fluid milk products and bulk fluid cream products received at the partially regulated distributing plant from a pool plant or an other order plant shall be allocated at the partially regulated distributing plant to the same class in which such products were classified at the fully regulated plant;

(ii) Fluid milk products and bulk fluid cream products transferred from the partially regulated distributing plant to a pool plant or an other order plant shall be classified at the partially regulated distributing plant in the class to which allocated at the fully regulated pant. Such transfers shall be allocated to the extent possible to those receipts at the partially regulated distributing plant from pool plants and other order plants that are classified in the corresponding class pursuant to paragraph (b)(1)(i) of this section. Any such transfers remaining after the above allocation which are classified in Class I and for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1070.60 shall be priced at the uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee-plant, with such uniform price adjusted to the location of the nonpool plant(but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

(iii) If the operator of the partially regulated distributing plant so requests, the value of milk determined pursuant to § 1070.60 for such handler shall include, in lieu of the value of other source milk specified in § 1070.60(f) less the value of such other source milk specified in § 1070.71(a)(2)(ii), a value of milk determined pursuant to § 1070.60 for each nonpool plant that is not an other order plant which serves as a supply plant for such partially regulated distributing plant by making shipments to the partially regulated distributing plant during the month equivalent to the requirements of § 1070.7(b), subject to the following conditions:

(*a*) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1070.30(b) and 1070.31(b) similar reports for each such nonpool supply plant;

(*b*) The operator of such nonpool supply plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for verification purposes; and

(*c*) The value of milk determined pursuant to § 1070.60 for such nonpool supply plant shall be determined in the same manner prescribed for computing the obligation of such partially regulated distributing plant; and

(2) From the partially regulated distributing plant's value of milk computed pursuant to paragraph (b)(1) of this section, subtract:

(i) The gross payments by the operator of such partially regulated distributing plant, adjusted to a 3.5 percent butterfat basis by the butterfat differenial specified in § 1070.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated;

(ii) If paragraph (b)(1)(iii) of this section applies, the gross payments by the operator of such nonpool supply plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1070.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated; and

(iii) The payments by the operator of the partially regulated distributing plant to the producer-settlement fund of another order under which such plant is also a partially regulated distributing plant and like payments by the operator of the nonpool supply plant if paragraph (b)(1)(iii) of this section applies.

§ 1070.77 Adjustment of accounts.

Whenever audit by the market administrator of any handler's reports, books, records, or accounts discloses errors resulting in money due (a) the market administrator from such handler, (b) such handler from the market administrator, or (c) any producer or cooperative association from such handler, the market administrator shall promptly notify such handler of any amount so due; and payment thereof shall be made on or before the next date for making payment set forth in the provisions under which such error occurred.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

§ 1070.85 Assessment for order administration.

As his pro rata share of the expense of administration of the order, each handler shall pay to the market administrator on or before the 12th day after the end of the month 4 cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to:

(a) Producer milk;

(b) Other source milk allocated to Class I pursuant to § 1070.44(a) (7) and (11) and the corresponding steps of § 1070.44(b), except such other source milk that is excluded from the computations pursuant to § 1070.60 (d) and (f); and

(c) Class I milk disposed of from a partially regulated distributing plant on routes in the marketing area that exceeds the skim milk and butterfat subtracted pursuant to § 1070.76(a)(2).

§ 1070.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler in making payments to each producer pursuant to § 1070.73 shall deduct 5 cents per hundredweight or such lesser amount as the Secretary may prescribe with respect to all milk received by such handler from such producer (except such handler's own farm production) during the month, and shall pay such deductions to the market administrator not later than the 12th day after the end of the month. Such money shall be used by the market administrator to verify or establish weights, samples, and tests of milk received by handlers from such producers during the month and to provide such producers with market information.

(b) In the case of producers for whom a cooperative association is actually performing, as determined by the Secretary,

the services set forth in paragraph (a) of this section, each handler shall, in lieu of the deductions specified in paragraph (a) of this section, make such deductions as are authorized by such producers and, on or before, the 12th day after the end of each month, pay over such deductions to the association rendering such services.

PART 1076—MILK IN EASTERN SOUTH DAKOTA MARKETING AREA

Subpart—Order Regulating Handling

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AUTHORITY: Secs. 1–19, 48 Stat. 31, as amended (7 U.S.C. 601–674).

Subpart—Order Regulating Handling

GENERAL PROVISIONS

§ 1076.1 General provisions.

The terms, definitions, and provisions in Part 1000 of this chapter are hereby incorporated by reference and made a part of this order.

DEFINITIONS

§ 1076.2 Eastern South Dakota marketing area.

"Eastern South Dakota marketing area," hereinafter called the "marketing area," means all of the territory within the counties listed below, including all territory within such counties which is occupied by government (municipal, State or Federal) reservations, installations, institutions, or other establishments:

IOWA COUNTY

Lyon.

MINNESOTA COUNTY

Rock.

SOUTH DAKOTA COUNTIES

Aurora.
Beadle.
Bon Homme.
Brown.
Clark.
Clay.
Codington.
Davison.
Day.
Douglas.
Edmunds.
Hamlin.
Hanson.
Hutchinson.
Jerauld.
Kingsbury.
Lake.
Lincoln.
McCook.
McPherson.
Miner.
Minnehaha.
Moody.
Sanborn.
Spink.
Turner.
Union (except Jefferson Township and the city of North Sioux City and the unorganized territory adjacent thereto).
Walworth.
Yankton.

§ 1076.3 Route disposition.

"Route disposition" means a delivery (including delivery by a vendor or a sale from a plant store, or distribution center) of any fluid milk product classified as Class I milk to retail or wholesale outlets, except a delivery in bulk form to a milk (including filled milk) processing plant. The route disposition of a handler shall be attributed to the processing and packaging plant from which the Class I milk is moved to retail or wholesale outlets without intermediate movement to another processing plant.

§ 1076.4 [Reserved]

§ 1076.5 Distributing plant.

"Distributing plant" means a plant which is approved by an appropriate health authority for the processing or packaging of Grade A milk and from which there is route disposition during the month in the marketing area.

§ 1076.6 Supply plant.

"Supply plant" means a plant from which milk or skim milk acceptable to an appropriate health authority for distribution in the marketing area under a Grade A label, is shipped during the month to a pool plant qualified pursuant to § 1076.7(a).

§ 1076.7 Pool plant.

Except as provided in paragraph (d) of this section, "pool plant" means:

(a) A distributing plant from which route disposition, except filled milk, equals not less than 35 percent of the Grade A milk received at such plant from dairy farmers, handlers described in § 1076.9(c), and supply plants and not less than 15 percent of such receipts is disposed of as route disposition, except filled milk, in the marketing area.

(b) A supply plant from which the volume of fluid milk products, except filled milk, shipped during the month to pool plants qualified pursuant to paragraph (a) of this section is not less than 35 percent of the Grade A milk received at such plant from dairy farmers and handlers described in § 1076.9(c) during such month. If such shipments are not less than 50 percent of such receipts during each of the immediately preceding months of September through November, such plant shall be a pool plant for the months of March through June, unless the operator of such plant requests the market administrator in writing that such plant not be a pool plant, such nonpool status to be effective the first month following such notice and such plant shall thereafter be a nonpool plant until it again qualifies as a pool plant on the basis of the shipping requirements set forth in this paragraph.

(c) A plant, other than a distributing plant, operated by a cooperative association if more than 50 percent of the total milk supply of producer members of such cooperative association is shipped to pool distributing plants of other handlers during the month, either directly from the farm or by transfer from the plant of the cooperative association.

(d) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) A plant qualified pursuant to paragraph (a) of this section from which a lesser volume of fluid milk products, except filled milk, is disposed of in the Eastern South Dakota marketing area than in the marketing area of another marketing agreement or order issued pursuant to the Act and which is fully subject to the classification and pricing provisions of such other agreement or order;

(3) Any plant qualified pursuant to paragraph (b) of this section for any portion of the period of March through June, inclusive, that producer milk at such plant is subject to the classification and pricing provisions of another order issued pursuant to the Act; and

(4) That portion of a plant that is physically apart from the Grade A portion of such plant, is operated separately and is not approved by any health authority for the receiving, processing, or packaging of any fluid milk product for Grade A disposition.

§ 1076.8 Nonpool plant.

"Nonpool plant" means any milk or filled milk receiving, manufacturing, or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant, from which there is route disposition in consumer-type packages or dispenser units in the marketing area during the month.

(d) "Unregulated supply plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant, and from which fluid milk products are shipped during the month to a pool plant.

§ 1076.9 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of one or more pool plants;

(b) Any cooperative association with respect to the milk of producers diverted by the association for the account of such association pursuant to § 1076.13;

(c) A cooperative association with respect to milk of its member producers which is delivered from the farm to the pool plant of another handler in a tank truck owned and operated by, or under contract to, such cooperative association if the cooperative association notifies the market administrator and the handler to whom the milk is delivered, in writing prior to the first day of the month in which the milk is delivered, that it wishes to be the handler for the milk. In this case, the milk is received from producers by the cooperative association at the location of the plant to which it is delivered;

(d) Any person who operates a partially regulated distributing plant;

(e) A producer-handler; and

(f) Any person who operates an other order plant described in § 1076.7(d).

§ 1076.10 Producer-handler.

"Producer-handler" means any person who is both a dairy farmer and the operator of a distributing plant, and who meets all of the following conditions:

(a) Receipts of fluid milk products at his plant are solely milk of his own production and from pool plants of other handlers;

(b) Receives no milk products other than fluid milk products from any source for use in reconstituting fluid milk products; and

(c) The maintenance, care and management of the dairy animals and other resources necessary to produce the milk and the processing, packaging, and distribution of the milk (including filled milk) are the personal enterprise and the personal risk of such person.

§ 1076.11 [Reserved]

§ 1076.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk in compliance with the Grade A inspection requirements of a duly constituted health authority, and whose milk is (1) received at a pool plant, or (2) diverted as producer milk pursuant to § 1076.13.

(b) "Producer" shall not include:

(1) A producer-handler as defined in any order (including this part) issued pursuant to the Act;

(2) Any person with respect to milk produced by him which is diverted to a pool plant from an other order plant if the other order designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to § 1076.44(a)(8)(iii) and the corresponding step of § 1076.44(b); and

(3) Any person with respect to milk produced by him which is reported as diverted to an other order plant if any portion of such person's milk so moved is assigned to Class I under the provisions of such other order.

§ 1076.13 Producer milk.

"Producer milk" of each handler means all skim milk and butterfat produced by producers:

(a) With respect to receipts at a pool plant:

(1) Received directly from such producers; and

(2) Diverted from such pool plant to a nonpool plant that is not a producer-handler plant for the account of the operator of the pool plant, subject to the limitations and conditions of paragraph (c) of this section;

(b) With respect to receipts of a cooperative association:

(1) Diverted from a pool plant to a nonpool plant that is not a producer-handler plant, subject to the limitations and conditions of paragraph (c) of this section; and

(2) For which the cooperative association is the handler as described in § 1076.9(c); and

(c) With respect to diversions to nonpool plants pursuant to paragraphs (a)(2) and (b)(1) of this section:

(1) A cooperative handler may divert for its account the milk of any member producer, whose milk is delivered to a distributing pool plant on at least 3 days during the month without limit during the other days of such month. The total quantity of milk so diverted may be without limit during the months of March, April, May, and June, but shall not exceed 35 percent of its member producer milk received at all pool plants during any other month of the year. Diversions in excess of such percentage shall not be considered producer milk, and the diverting cooperative shall specify the dairy farmers whose milk is ineligible as producer milk. If the cooperative association fails to designate such dairy farmers whose milk is ineligible, producer milk status shall be forfeited with respect to all milk diverted to a nonpool plant by such cooperative association;

(2) A handler in his capacity as the operator of a distributing pool plant may divert for his account the milk of any producer, other than a member of a cooperative association which has diverted milk pursuant to paragraph (c)(1) of this section, whose milk is received at a pool plant on at least 3 days during the month, without limit during the other days of such month. The total quantity of milk so diverted may be without limit during the months of March, April, May, and June, but during any other month of the year shall not exceed 35 percent of the milk received from producers who are not members of a cooperative association which has diverted milk pursuant to paragraph (c)(1) of this section. Diversions in excess of such percentage shall not be considered producer milk, and the diverting handler shall specify the dairy farmers whose milk is ineligible as producer milk. If the handler fails to designate such dairy farmers whose milk is ineligible, producer milk status shall be forfeited with respect to all milk diverted to a nonpool plant by such handler; and

(3) For the purpose of location adjustments pursuant to §§ 1076.52 and 1076.75, milk so diverted shall be priced at the location of the plant from which diverted.

§ 1076.14 Other source milk.

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk products specified in § 1076.40(b)(1) from any source other than producers, handlers described in § 1076.9(c), or pool plants;

(b) Receipts in packaged form from other plants of products specified in § 1076.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1076.40(b)(1), and products produced at the plant during the same month) from any source which are reprocessed, converted into, or combined with another product in the plant during the month; and

(d) Receipts of any milk product (other than a fluid milk product or a product specified in § 1076.40(b)(1)) for which the handler fails to establish a disposition.

§ 1076.15 Fluid milk product.

(a) Except as provided in paragraph (b) of this section, "fluid milk product" means any of the following products in fluid or frozen form:

(1) Milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted; and

(2) Any milk product not specified in paragraph (a)(1) of this section or in § 1076.40(b) or (c)(1) (1) through (v) if it contains by weight at least 80 per-

cent water and 6.5 percent nonfat milk solids and less than 9 percent butterfat and 20 percent total solids.

(b) The term "fluid milk product" shall not include:

(1) Evaporated or condensed milk (plain or sweetened), evaporated or condensed skim milk (plain or sweetened), formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, any product that contains by weight less than 6.5 percent nonfat milk solids, and whey; and

(2) The quantity of skim milk in any modified product specified in paragraph (a) of this section that is in excess of the quantity of skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

§ 1076.16 Fluid cream product.

"Fluid cream product" means cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

§ 1076.17 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted, or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid milk product, and contains less than 6 percent nonmilk fat (or oil).

§ 1076.18 Cooperative association.

"Cooperative association" means any cooperative marketing association which the Secretary determines, after application by the association:

(a) Is qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act";

(b) Has full authority in the sale of milk of its members and to be engaged in making collective sales of or marketing milk or its products for its members; and

(c) Has its entire activities under the control of its members.

HANDLER REPORTS

§ 1076.30 Reports of receipts and utilization.

On or before the 7th day (excluding holidays) after the end of each month, each handler shall report for such month to the market administrator, in the detail and on the forms prescribed by the market administrator, as follows:

(a) Each handler, with respect to each of his pool plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the handler from the pool plant to other plants;

(2) Receipts of milk from handlers described in § 1076.9(c);

(3) Receipts of fluid milk products and bulk fluid cream 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 § 1076.40(b)(1); and

(6) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. Such report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1076.9 (b) and (c) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers; and

(2) The utilization or disposition of all such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to his receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

§ 1076.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1076.9 (a), (b), and (c) shall report to the market administrator his producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer:

(1) His name and address;

(2) The total pounds of milk received from such producer;

(3) The average butterfat content of such milk; and

(4) The price per hundredweight, the gross amount due, the amount and nature of any deductions, and the net amount paid.

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1076.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1076.32 Other reports.

In addition to the reports required pursuant to §§ 1076.30 and 1076.31, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligation under the order.

CLASSIFICATION OF MILK

§ 1076.40 Classes of utilization.

Except as provided in § 1076.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1076.30 shall be classified as follows:

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product, except as otherwise provided in paragraphs (b) and (c) of this section; and

(2) Not specifically accounted for as Class II or Class III milk.

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid cream product, eggnog, yogurt, and any product containing 6 percent or more nonmilk fat (or oil) that resembles a fluid cream product, eggnog, or yogurt, except as otherwise provided in paragraph (c) of this section;

(2) In packaged inventory at the end of the month of the products specified in paragraph (b)(1) of this section;

(3) In bulk fluid milk products and bulk fluid cream products disposed of to any commercial food processing establishment (other than a milk or filled milk plant) at which food products (other than milk products and filled milk) are processed and from which there is no disposition of fluid milk products or fluid cream products other than those received in consumer-type packages; and

(4) Used to produce:

(i) Cottage cheese, lowfat cottage cheese, and dry curd cottage cheese;

(ii) Milkshake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts, and frozen dessert mixes;

(iii) Any concentrated milk product in bulk, fluid form other than that specified in paragraph (c)(1)(iv) of this section;

(iv) Plastic cream, frozen cream, and anhydrous milkfat;

(v) Custards, puddings, and pancake mixes; and

(vi) Formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers.

(c) *Class III milk.* Class III milk shall be all skim milk and butterfat:

(1) Used to produce:

(i) Cheese (other than cottage cheese, lowfat cottage cheese, and dry curd cottage cheese);

(ii) Butter;

(iii) Any milk product in dry form;

(iv) Any concentrated milk product in bulk, fluid form that is used to produce a Class III product;

(v) Evaporated or condensed milk (plain or sweetened) in a consumer-type package and evaporated or condensed skim milk (plain or sweetened) in a consumer-type package; and

(vi) Any product not otherwise specified in this section;

(2) In inventory at the end of the month of fluid milk products in bulk or packaged form and products specified in paragraph (b)(1) of this section in bulk form;

(3) In fluid milk products and products specified in paragraph (b)(1) of this section that are disposed of by a handler for animal feed;

(4) In fluid milk products and products specified in paragraph (b)(1) of this section that are dumped by a handler if the market administrator is notified of such dumping in advance and is

given the opportunity to verify such disposition;

(5) In skim milk in any modified fluid milk product that is in excess of the quantity of skim milk in such product that was included within the fluid milk product definition pursuant to § 1076.15; and

(6) In shrinkage assigned pursuant to § 1076.41(a) to the receipts specified in § 1076.41(a)(2) and in shrinkage specified in § 1076.41 (b) and (c).

§ 1076.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1076.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraph (b) (1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) In other source milk not specified in paragraph (b) (1) through (6) of this section which was received in the form of a bulk fluid milk product or a bulk fluid cream product;

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in paragraph (a)(1) of this section that is not in excess of:

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant);

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1076.9(c), except that, if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be 2 percent;

(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer milk diverted from such plant by the plant operator to another plant, except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests, determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be zero;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other pool plants;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received from other order plants, excluding milk received by diversion and the quantity for which Class II or Class III classification is requested by the operators of both plants;

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received from unregulated supply plants, excluding the quantity for which Class II or Class III classification is requested by the handler; and

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products transferred to other plants that is not in excess of the respective amounts of skim milk and butterfat to which percentages are applied in paragraph (b)(1), (2), (4), (5), and (6) of this section; and

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1076.9 (b) or (c), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

§ 1076.42 Classification of transfers and diversions.

(a) *Transfers to pool plants.* Skim milk or butterfat transferred in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant or by a handler described in § 1076.9(c) to another handler's pool plant shall be classified as follows:

(1) Such transfers from a pool plant shall be classified as Class I milk unless the operators of both plants request the same classification in another class. In either case, the classification of such transfers shall be subject to the following conditions:

(i) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant after the computations pursuant to § 1076.44(a)(12) and the corresponding step of § 1076.44(b);

(ii) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1076.44(a)(7) or the corresponding step of § 1076.44(b), the skim milk or butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(iii) If the transferor-handler received during the month other source milk to be allocated pursuant to § 1076.44 (a) (11) or (12) or the corresponding steps of § 1076.44(b), the skim milk or butterfat so transferred up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee plant; and

(2) Such transfers by a handler described in § 1076.9(c) shall be classified pro rata to the respective quantities of skim milk and butterfat remaining in each class after the computations pursuant to § 1076.44(a)(13)(i) and the corresponding step of § 1076.44(b).

(b) *Transfers and diversions to other order plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to an other order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the pool plant from the other order plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in paragraph (b) (1), (2), or (3) of this section:

(1) If transferred as packaged fluid milk products, classification shall be in the classes to which allocated as a fluid milk product under the other order;

(2) If transferred in bulk form, classification shall be in the classes to which allocated under the other order (including allocation under the conditions set forth in paragraph (b)(3) of this section);

(3) If the operators of both plants so request in their reports of receipts and utilization filed with their respective market administrators, transfers or diversions in bulk form shall be classified as Class II or Class III milk to the extent of such utilization available for such classification pursuant to the allocation provisions of the other order;

(4) If information concerning the classes to which such transfers or diversions were allocated under the other order is not available to the market administrator for the purpose of establishing classification under this paragraph, classification shall be as Class I, subject to adjustment when such information is available;

(5) For purposes of this paragraph, if the other order provides for a different number of classes of utilization than is provided for under this part, skim milk or butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I milk, and skim milk or butterfat allocated to the other classes shall be classified as Class III milk; and

(6) If the form in which any fluid milk product that is transferred to an other order plant is not defined as a fluid milk product under such other order, classification under this paragraph shall be in accordance with the provisions of § 1076.40.

(c) *Transfers to producer-handlers.* Skim milk or butterfat transferred in the following forms from a pool plant to a producer-handler under this or any other Federal order shall be classified:

(1) As Class I milk, if transferred in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it by the market administrator, if transferred in the form of a bulk fluid cream product. For this purpose, the producer-handler's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to his receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) *Transfers and diversions to other nonpool plants.* Skim milk or butterfat transferred or diverted in the following forms from a pool plant to a nonpool plant that is not an other order plant or a producer-handler plant shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in paragraph (d)(2)(i) (*a*) and (*b*) of this section are met, transfers or diversions in bulk form shall be classified on the basis of the assignment of the nonpool plant's utilization to its receipts as set forth in paragraph (d)(2) (ii) through (viii) of this section:

(*a*) The transferor-handler or diverter-handler claims such classification in his report of receipts and utilization filed pursuant to § 1076.30 for the month within which such transaction occurred; and

(*b*) The nonpool plant operator maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available for verification purposes if requested by the market administrator;

(ii) Route disposition in the marketing area of each Federal milk order from the nonpool plant and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of packaged fluid milk products at such nonpool plant from pool plants;

(*b*) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from other order plants;

(*c*) Pro rata to receipts of bulk fluid milk products at such nonpool plant from pool plants; and

(*d*) Pro rata to any remaining unassigned receipts of bulk fluid milk products at such nonpool plant from other order plants;

(iii) Any remaining Class I disposition of packaged fluid milk products from the nonpool plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from pool plants and other order plants;

(iv) Transfers of bulk fluid milk products from the nonpool plant to a plant fully regulated under any Federal milk order, to the extent that such transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the transferee-plant, shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of fluid milk products at such nonpool plant from pool plants; and

(*b*) Pro rata to any remaining unassigned receipts of fluid milk products at such nonpool plant from other order plants;

(v) Any remaining unassigned Class I disposition from the nonpool plant shall be assigned to the extent possible in the following sequence:

(*a*) To such nonpool plant's receipts from dairy farmers who the market administrator determines constitute regular sources of Grade A milk for such nonpool plant; and

(*b*) To such nonpool plant's receipts of Grade A milk from plants not fully regulated under any Federal milk order which the market administrator determines constitute regular sources of Grade A milk for such nonpool plant;

(vi) Any remaining unassigned receipts of bulk fluid milk products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class I utilization, then to Class III utilization, and then to Class II utilization at such nonpool plant;

(vii) Receipts of bulk fluid cream products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class III utilization, then to any remaining Class II utilization, and then to Class I utilization at such nonpool plant; and

(viii) In determining the nonpool plant's utilization for purposes of this subparagraph, any fluid milk products and bulk fluid cream products transferred from such nonpool plant to a plant not fully regulated under any Federal milk order shall be classified on the basis of the second plant's utilization using the same assignment priorities at the second plant that are set forth in this subparagraph.

§ 1076.43 General classification rules.

In determining the classification of producer milk pursuant to § 1076.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1076.30 and shall compute separately for each pool plant and for each cooperative association with respect to milk for which it is the handler pursuant to § 1076.9 (b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1076.40, 1076.41, and 1076.42;

(b) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids; and

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1076.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1076.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1076.9(a) for each of his pool plants separately and of each handler described in § 1076.9 (b) and (c) by allocating the handler's receipts of skim milk and butterfat to his utilization as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1076.41(b);

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products received in packaged form from an other order plant, except that to be subtracted pursuant to paragraph (a)(7)(vi) of this section, as follows:

(i) From Class III milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(4) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 1076.40(b)(1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(5) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1076.40(b)(1) that were in inventory at the beginning of the month in packaged form, but not in excess of the pounds of skim milk remaining in Class II. This subparagraph shall apply only if the pool plant was subject to the provisions of this subparagraph or comparable provisions of another Federal milk order in the immediately preceding month;

(6) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or a fluid cream product) that is used to produce, or added to, any product specified in § 1076.40(b), but not in excess of the pounds of skim milk remaining in Class II;

(7) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Other source milk (except that received in the form of a fluid milk product) and, if paragraph (a)(5) of this section applies, packaged inventory at the beginning of the month of products specified in § 1076.40(b)(1) that was not subtracted pursuant to paragraph (a)(4), (5), and (6) of this section;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established;

(iii) Receipts of fluid milk products from unidentified sources;

(iv) Receipts of fluid milk products from a producer-handler as defined under this or any other Federal milk order;

(v) Receipts of reconstituted skim milk in filled milk from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2) of this section; and

(vi) Receipts of reconstituted skim milk in filled milk from an other order plant that is regulated under any Federal milk order providing for individual-handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor-plant;

(8) Subtract in the order specified below from the pounds of skim milk remaining in Class II and Class III, in sequence beginning with Class III:

(i) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2) and (7)(v) of this section for which the handler requests a classification other than Class I, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(ii) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a) (2), (7)(v), and (8)(i) of this section which are in excess of the pounds of skim milk determined pursuant to paragraph (a) (8)(ii) (*a*) through (*c*) of this section. Should the pounds of skim milk to be subtracted from Class II and Class III combined exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount:

(*a*) Multiply by 1.25 the sum of the pounds of skim milk remaining in Class I at this allocation step at all pool plants of the handler (excluding any duplication of Class I utilization resulting from reported Class I transfers between pool plants of the handler);

(*b*) Subtract from the above result the sum of the pounds of skim milk in receipts at all pool plants of the handler of producer milk, milk from a handler described in § 1076.9(c), fluid milk products from pool plants of other handlers, and bulk fluid milk products from other order plants that were not subtracted pursuant to paragraph (a)(7)(vi) of this section; and

(*c*) Multiply any plus quantity resulting above by the percentage that the receipts of skim milk in fluid milk products from unregulated supply plants that remain at this pool plant is of all such receipts remaining at this allocation step at all pool plants of the handler; and

(iii) The pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraph (a)(7)(vi) of this section, if Class II or Class III classification is requested by the operator of the other order plant and the handler, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(9) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 1076.40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to paragraph (a)(5) and (7)(i) of this section;

(10) Add to the remaining pounds of skim milk in Class III the pounds of skim milk subtracted pursuant to paragraph (a)(1) of this section;

(11) Subject to the provisions of paragraph (a)(11) (i) and (ii) of this section, subtract from the pounds of skim milk remaining in each class at the plant, pro rata to the total pounds of skim milk remaining in Class I and in Class II and Class III combined at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler), with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, the pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a) (2), (7)(v), and (8) (i) and (ii) of this section and that were not offset by transfers or diversions of fluid milk products to the same unregulated supply plant from which fluid milk products to be allocated at this step were received:

(i) Should the pounds of skim milk to be subtracted from Class II and Class III combined pursuant to this subparagraph exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(ii) Should the pounds of skim milk to be subtracted from Class I pursuant to this subparagraph exceed the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount, beginning with the nearest plant at which Class I utilization is available;

(12) Subtract in the manner specified below from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraph (a) (7)(vi) and (8)(iii) of this section:

(i) Subject to the provisions of paragraph (a)(12) (ii), (iii), and (iv) of this section, such subtraction shall be pro rata to the pounds of skim milk in Class I and in Class II and Class III combined, with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, with respect to whichever of the following quantities represents the lower proportion of Class I milk:

(*a*) The estimated utilization of skim milk of all handlers in each class as announced for the month pursuant to § 1076.45(a); or

(*b*) The total pounds of skim milk remaining in each class at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler);

(ii) Should the proration pursuant to paragraph (a)(12)(i) of this section result in the total pounds of skim milk at all pool plants of the handler that are to be subtracted at this allocation step from Class II and Class III combined exceeding the pounds of skim milk remaining in Class II and Class III at all such plants, the pounds of such excess shall be subtracted from the pounds of skim milk remaining in Class I after such proration at the pool plants at which such other source milk was received;

(iii) Except as provided in paragraph (a)(12)(ii) of this section, should the computations pursuant to paragraph (a) (12) (i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class II and Class III combined that exceeds the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at

each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(iv) Except as provided in paragraph (a)(12)(ii) of this section, should the computations pursuant to paragraph (a)(12) (i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class I that exceeds the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount beginning with the nearest plant at which Class I utilization is available;

(13) Subtract in the following order from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products and bulk fluid cream products from:

(i) Another pool plant according to the classification of such products pursuant to § 1076.42(a)(1); and

(ii) A handler described in § 1076.9(c) according to the classification of such products pursuant to § 1076.42(a)(2); and

(14) If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) The quantity of producer milk in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to paragraph (a)(14) of this section and the corresponding step of paragraph (b) of this section.

§ 1076.45 Market administrator's reports and announcements concerning classification.

The market administrator shall make the following reports and announcements concerning classification:

(a) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1076.44(a)(12) and the corresponding step of § 1076.44(b), estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose.

(b) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from an other order plant, the class to which such receipts are allocated pursuant to § 1076.44 on the basis of such report, and, thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

(c) Furnish to each handler operating a pool plant who has shipped fluid milk products or bulk fluid cream products to an other order plant the class to which such shipments were allocated by the market administrator of the other order on the basis of the report by the receiving handler, and, as necessary, any changes in such allocation arising from the verification of such report.

(d) On or before the 12th day after the end of each month, report to each cooperative association, which so requests, the percentage of the milk caused to be delivered by the cooperative association or its members to the pool plant(s) of each handler during the month, which was utilized in each class. For the purpose of this report, the milk so delivered shall be allocated to each class for each handler in the same ratio as all producer milk received by such handler during the month.

Class Prices

§ 1076.50 Class prices.

Subject to the provisions of § 1076.52, the class prices for the month per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $1.50.

(b) *Class II price.* The Class II price shall be the basic formula price for the month plus 10 cents.

(c) *Class III price.* The Class III price shall be the basic formula price for the month.

§ 1076.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential (rounded to the nearest one-tenth cent) per one-tenth percent butterfat shall be 0.12 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month. For the purpose of computing the Class I price, the resulting price shall be not less than $4.33.

§ 1076.52 Plant location adjustments for handlers.

(a) For milk received from producers at a pool plant located 100 miles or more by shortest hard-surfaced highway distance as measured by the market administrator, from the nearest of the Post Offices of Aberdeen, Huron, Mitchell, Sioux Falls, and Watertown, S. Dak., and disposed of as Class I milk, the price computed pursuant to § 1076.50(a) shall be reduced 15 cents, plus 1.5 cents for each 10 miles or fraction thereof that such distance exceeds 110 miles.

(b) For purposes of calculating such adjustment, transfers between pool plants shall be assigned to Class I disposition remaining at the transferee-plant after computations pursuant to § 1076.44(a)(12) and the corresponding step of § 1076.44(b) in excess of 95 percent of receipts at such plant of milk from producers and handlers described in § 1076.9(c), such assignment to be made first to transferor-plants at which no location adjustment credit is applicable and then in sequence beginning with the plant at which the least location adjustment would apply.

(c) The Class I price applicable to other source milk shall be adjusted at the rates set forth in paragraph (a) of this section, except that the adjusted Class I price shall not be less than the Class III price.

§ 1076.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month and the Class II and Class III prices for the preceding month.

§ 1076.54 Equivalent price.

If for any reason a price or pricing constituent required by this part for computing class prices or for other purposes is not available as prescribed in this part, the market administrator shall use a price or pricing constituent determined by the Secretary to be equivalent to the price or pricing constituent that is required.

Uniform Price

§ 1076.60 Handler's value of milk for computing uniform price.

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler with respect to each of his pool plants and of each handler described in § 1076.9 (b) and (c) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1076.44 by the applicable class prices and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1076.44(a)(14) and the corresponding step of § 1076.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1076.74, that are applicable at the location of the pool plant;

(c) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the pool plant or the Class II price, as the case may be, for the current month by the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1076.44 (a) (9) and the corresponding step of § 1076.44(b);

(d) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1076.44(a) (7) (i) through (iv) and the corresponding step of § 1076.44 (b), excluding receipts of bulk fluid cream products from an other order plant;

(e) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the transferor-plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1076.44(a) (7) (v) and (vi) and the corresponding step of § 1076.44 (b); and

(f) Add the amount obtained from multiplying the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1076.44(a) (11) and the corresponding step of § 1076.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

§ 1076.61 Computation of uniform price.

For each month the market administrator shall compute the uniform price per hundredweight of milk of 3.5 percent butterfat content which is received from producers as follows:

(a) Combine into one total the values computed pursuant to § 1076.60 for all handlers who filed the reports prescribed in § 1076.30 for such month, except those in default of payments required pursuant to § 1076.71 and 1076.73 for the preceding month;

(b) Add an amount equal to the total value of the location adjustments computed pursuant to § 1076.75;

(c) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(d) Divide the aggregate value computed pursuant to paragraphs (a), (b), and (c) of this section by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1076.60 (f); and

(e) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (d) of this section. The result shall be the uniform price for milk received from producers.

§ 1076.62 Announcement of uniform price and butterfat differential.

The market administrator shall announce publicly on or before:

(a) The fifth day after the end of each month the butterfat differential for such month; and

(b) The 12th day after the end of each month the uniform price for such month.

Payments for Milk

§ 1076.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to §§ 1076.71, 1076.76, and 1076.77 and out of which he shall make all payments to handlers pursuant to §§ 1076.72 and 1076.77: *Provided,* That the market administrator shall offset the payment due to a handler against payments due from each handler.

§ 1076.71 Payments to the producer-settlement fund.

(a) On or before the 13th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the amount specified in paragraph (a) (1) of this section exceeds the amount specified in paragraph (a) (2) of this section:

(1) The total value of milk of the handler for such month as determined pursuant to § 1076.60.

(2) The sum of:

(i) The value at the uniform price, as adjusted pursuant to § 1076.75, of such handler's receipts of producer milk; and

(ii) The value at the uniform price applicable at the location of the plant from which received of other source milk for which a value is computed pursuant to § 1076.60(f).

(b) On or before the 25th day after the end of the month each handler who operated an other order plant that was regulated during such month under an order providing for individual-handler pooling shall pay to the market administrator an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk in route disposition from such plant in the marketing area which was allocated to Class I at such plant. If there is such route disposition from such plant in marketing areas regulated by two or more marketwide pool orders, the reconstituted skim milk allocated to Class I shall be prorated to each order according to such route disposition in each marketing area; and

(2) Compute the value of the reconstituted skim milk assigned in paragraph (b) (1) of this section to route disposition in this marketing area by multiplying the quantity of such skim milk by the difference between the Class I price under this part that is applicable at the location of the other order plant (but not to be less than the Class III price) and the Class III price.

§ 1076.72 Payments from the producer-settlement fund.

On or before the 14th day after the end of each month the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1076.71(a) (2) exceeds the amount computed pursuant to § 1076.71(a) (1): *Provided,* That if the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the necessary funds are available. A handler who has not received the balance of such payments from the market administrator shall not be considered in violation of § 1076.73 if he reduces his payments to producers by not more than the amount of the reduction in payment from the producer-settlement fund.

§ 1076.73 Payments to producers and to cooperative associations.

(a) Each handler shall pay each producer for producer milk for which payment is not made to a cooperative association pursuant to paragraph (b) or (c) of this section, as follows:

(1) On or before the last day of each month, for producer milk received during the first 15 days of the month, at not less than the Class III price for the preceding month; and

(2) On or before the 15th day after the end of each month, for milk received during such month, an amount computed at not less than the uniform price per hundredweight, as adjusted pursuant to §§ 1076.74 and 1076.75, plus or minus adjustments for errors made in previous payments to such producer; and less

(i) Payment made pursuant to paragraph (a) (1) of this section;

(ii) Location adjustment deductions pursuant to § 1076.75; and

(iii) Proper deductions authorized by such producer;

(b) Except as provided in paragraph (c) of this section each handler shall make payment to a cooperative association for producer milk which it caused to be delivered to such handler, if such cooperative association is authorized to collect such payments for its members and exercises such authority, an amount equal to the sum of the individual payments otherwise payable for such producer milk, as follows:

(1) On or before the 26th day of each month an amount equal to not less than the sum of the individual payments otherwise payable to producers pursuant to paragraph (a) (1) of this section; and

(2) On or before the 13th day after the end of each month, an amount equal to not less than the sum of the individual payments otherwise payable to producers

pursuant to paragraph (a)(2) of this section;

(c) To a cooperative association with respect to receipts of milk for which such cooperative association is the handler as described in § 1076.9(c) as follows:

(1) On or before the 26th day of the month, for milk received during the first 15 days of the month an amount per hundredweight equal to not less than the uniform price for the preceding month; and

(2) On or before the 13th day after the end of each month not less than the value of such milk at the class prices, as adjusted by the butterfat differential specified in § 1076.74, that are applicable at the location of the receiving handler's pool plant, and less payment made pursuant to paragraph (c)(1) of this section; and

(d) In making the payments for producer milk pursuant to this section, each handler shall furnish each producer or cooperative association from whom he has received milk with a supporting statement in such form that it may be retained by the recipient, that shall show:

(1) The month and identity of the handler and of the producer;

(2) The pounds per shipment, the total pounds and the average butterfat content of milk received from the producer;

(3) The minimum rate or rates at which payment to the producer is required pursuant to the order;

(4) The rate that is used in making the payment, if such rate is other than the applicable minimum rate;

(5) The amount or the rate per hundredweight and nature of each deduction claimed by the handler; and

(6) The net amount of payment to such producer or cooperative association.

§ 1076.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.115 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month.

§ 1076.75 Plant location adjustments for producers and on nonpool milk.

(a) The uniform price computed pursuant to § 1076.61 for producer milk received at a pool plant shall be reduced according to the location of the pool plant, at the rates set forth in § 1076.52; and

(b) For purposes of computations pursuant to §§ 1076.71 and 1076.72 the uniform price shall be adjusted at the rates set forth in § 1076.52 applicable at the location of the nonpool plant from which the milk was received, except that the adjusted uniform price shall not be less than the Class III price.

§ 1076.76 Payments by handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay on or before the 25th day after the end of the month to the market administrator for the producer-settlement fund the amount computed pursuant to paragraph (a) of this section. If the handler submits pursuant to §§ 1076.30(b) and 1076.31(b) the information necessary for making the computations, such handler may elect to pay in lieu of such payment the amount computed pursuant to paragraph (b) of this section:

(a) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the pounds of route disposition in the marketing area from the partially regulated distributing plant;

(2) Subtract the pounds of fluid milk products received at the partially regulated distributing plant:

(i) As Class I milk from pool plants and other order plants, except that subtracted under a similar provision of another Federal milk order; and

(ii) From another nonpool plant that is not an other order plant to the extent that an equivalent amount of fluid milk products disposed of to such nonpool plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract the pounds of reconstituted skim milk in route disposition in the marketing area from the partially regulated distributing plant;

(4) Multiply the remaining pounds by the difference between the Class I price and the uniform price, both prices to be applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price); and

(5) Add the amount obtained from multiplying the pounds of reconstituted skim milk specified in paragraph (a)(3) of this section by the difference between the Class I price applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price) and the Class III price.

(b) The payment under this paragraph shall be the amount resulting from the following computations;

(1) Determine the value that would have been computed pursuant to § 1070.60 for the partially regulated distributing plant if the plant had been a pool plant, subject to the following modifications:

(i) Fluid milk products and bulk fluid cream products received at the partially regulated distributing plant from a pool plant or an other order plant shall be allocated at the partially regulated distributing plant to the same class in which such products were classified at the fully regulated plant;

(ii) Fluid milk products and bulk fluid cream products transferred from the partially regulated distributing plant to a pool plant or an other order plant shall be classified at the partially regulated distributing plant in the class to which allocated at the fully regulated plant. Such transfers shall be allocated to the extent possible to those receipts at the partially regulated distributing plant from pool plants and other order plants that are classified in the corresponding class pursuant to paragraph (b)(1)(i) of this section. Any such transfers remaining after the above allocation which are classified in Class I and for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1076.60 shall be priced at the uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee-plant, with such uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

(iii) If the operator of the partially regulated distributing plant so requests, the value of milk determined pursuant to § 1076.60 for such handler shall include, in lieu of the value of other source milk specified in § 1076.60(f) less the value of such other source milk specified in § 1076.71(a)(2)(ii), a value of milk determined pursuant to § 1076.60 for each nonpool plant that is not an other order plant which serves as a supply plant for such partially regulated distributing plant by making shipments to the partially regulated distributing plant during the month equivalent to the requirements of § 1076.7(b), subject to the following conditions:

(*a*) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1076.30(b) and 1076.31(b) similar reports for each such nonpool supply plant;

(*b*) The operator of such nonpool supply plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for verification purposes; and

(*c*) The value of milk determined pursuant to § 1076.60 for such nonpool supply plant shall be determined in the same manner prescribed for computing the obligation of such partially regulated distributing plant; and

(2) From the partially regulated distributing plant's value of milk computed pursuant to paragraph (b)(1) of this section, subtract:

(i) The gross payments by the operator of such partially regulated distributing plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1076.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated;

(ii) If paragraph (b)(1)(iii) of this section applies, the gross payments by the operator of such nonpool supply

plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1076.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated; and

(iii) The payments by the operator of the partially regulated distributing plant to the producer-settlement fund of another order under which such plant is also a partially regulated distributing plant and like payments by the operator of the nonpool supply plant if paragraph (b)(1)(iii) of this section applies.

§ 1076.77 Adjustment of accounts.

(a) Whenever verification by the market administrator of reports of payments of any handler discloses errors made in payments to or from the producer-settlement fund, the market administrator shall promptly bill such handler for any unpaid amount and such handler shall, within 15 days of such billing make payments to the market administrator of the amount so billed and whenever verification discloses that payment is due from the market administrator to any handler, the market administrator shall, within 15 days make such payment to such handler.

(b) Whenever verification by the market administrator of the payment by a handler to any producer or cooperative association discloses payment of less than is required by § 1076.73, the handler shall make up such payment to the producer or cooperative association not later than the time of making payment next following such disclosure.

§ 1076.78 Charges on overdue accounts.

Any unpaid obligation of a handler pursuant to § 1076.71(a) shall be increased by one-half of 1 percent for each month or portion thereof that such payment is overdue.

ADMINISTRATIVE ASSESSMENT

§ 1076.85 Assessment for order administration.

As his pro rata share of the expense of administration of the order, each handler shall pay to the market administrator on or before the 15th day after the end of the month 5 cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to:

(a) Producer milk, including such handler's own production;

(b) Other source milk allocated to Class I pursuant to § 1076.44(a) (7) and (11) and the corresponding steps of § 1076.44(b), except such other source milk that is excluded from the computations pursuant to § 1076.60 (d) and (f); and

(c) Route disposition from a partially regulated distributing plant in the marketing area that exceeds the skim milk and butterfat subtracted pursuant to § 1076.76(a)(2).

PART 1078—MILK IN NORTH CENTRAL IOWA MARKETING AREA

Subpart—Order Regulating Handling

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ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

Sec.
1078.85 Assessment for order administration.
1078.86 Deduction for marketing services.

AUTHORITY: Secs. 1–19, 48 Stat. 31, as amended (7 U.S.C. 601–674).

Subpart—Order Regulating Handling

GENERAL PROVISIONS

§ 1078.1 General provisions.

The terms, definitions, and provisions in Part 1000 of this chapter are hereby incorporated by reference and made a part of this order.

DEFINITIONS

§ 1078.2 North Central Iowa marketing area.

"North Central Iowa marketing area" (hereinafter called the "marketing area") means all the territory within the boundaries of the city of Osage and the counties of Black Hawk, Bremer, Buchanan, Butler, Cerro Gordo, Chickasaw, Fayette, Floyd, Franklin, Grundy, Hamilton, Hancock, Hardin, Humboldt, Marshall, Tama, Webster, and Wright, all in the State of Iowa, including territory within such boundaries which is occupied by government (Municipal, State, or Federal) reservations, installations, institutions or other establishments.

§ 1078.3 [Reserved]

§ 1078.4 [Reserved]

§ 1078.5 Distributing plant.

"Distributing plant" means a plant which is approved by an appropriate health authority for the processing or packaging of Grade A milk from which any fluid milk product is disposed of during the month on routes (including routes operated by vendors) or through plant stores to retail or wholesale outlets (except other plants) located in the marketing area.

§ 1078.6 Supply plant.

"Supply plant" means a plant from which milk or skim milk which is acceptable to the appropriate health authority for distribution in the marketing area under a Grade A label is shipped during the month to a pool plant qualified pursuant to § 1078.7.

§ 1078.7 Pool plant.

Except as provided in paragraph (c) of this section, "pool plant" means:

(a) A distributing plant from which a volume of Class I milk, except filled milk, equal to more than an average of 1,000 pounds per day or not less than 15 percent of the Grade A milk received at such plant from dairy farmers and from other plants is disposed of during the month on routes (including routes operated by vendors) or through plant stores to retail or wholesale outlets (except other plants) in the marketing area.

(b) A supply plant for the month in which shipments of milk or skim milk are made to distributing plants which are pool plants on not less than 10 days in any of the months of September, October, and November and on not less than 5 days in other months: *Provided*, That a supply plant which was not a pool plant for each of the immediately preceding months of September, October, and November shall not be a pool plant for any month during which none of the milk or skim milk from such plant would be allocated to Class I milk pursuant to the procedure specified in

§ 1078.44(a)(13), and the corresponding step of § 1078.44(b) at a distributing plant which is a pool plant.

(c) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant; and

(2) A distributing plant or a supply plant during any month in which such plant would be subject to the classification and pricing provisions of another order issued pursuant to the Act unless such plant is qualified as a pool plant pursuant to paragraph (a) or (b) of this section and a greater volume of fluid milk products, except filled milk, is disposed of from such plant to retail or wholesale outlets and to pool plants in the North Central Iowa marketing area than in the marketing area regulated pursuant to such other order.

§ 1078.8 Nonpool plant.

"Nonpool plant" means any milk or filled milk receiving, manufacturing, or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant, from which fluid milk products in consumer-type packages or dispenser units are distributed on routes in the marketing area during the month.

(d) "Unregulated supply plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant from which fluid milk products are shipped during the month to a pool plant.

§ 1078.9 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of one or more distributing or supply plants.

(b) [Reserved]

(c) A cooperative association with respect to Grade A milk received from dairy farmers in a tank truck, the operation of which is under the control of such cooperative association, and delivered in such tank truck to a pool plant: *Provided*, That such milk shall be deemed to have been received directly from producers at the location of the pool plant by the operator of the pool plant to which it is delivered by the tank truck.

§ 1078.10 Producer-handler.

"Producer-handler" means any person who operates a dairy farm and a distributing plant but who receives no milk from other dairy farmers.

§ 1078.11 [Reserved]

§ 1078.12 Producer.

Except as provided in paragraph (b) of this section, "producer" means any person who produces milk in compliance with the Grade A inspection requirements of a duly constituted health authority, and whose milk is (1) received at a pool plant, or (2) diverted from a pool plant to a nonpool plant that is not a producer-handler plant for the account of the operator of the pool plant (i) any day during the months of April through June, and (ii) on not more than one-half the days on which milk was delivered from a farm during any of the months of July through March.

(b) "Producer" shall not include:

(1) A producer-handler as defined in any order (including this part) issued pursuant to the Act;

(2) Any person with respect to milk produced by him which is diverted to a pool plant from an other order plant if the other order designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to § 1078.44(a)(8)(iii) and the corresponding step of § 1078.44(b); and

(3) Any person with respect to milk produced by him which is reported as diverted to an other order plant if any portion of such person's milk so moved is assigned to Class I under the provisions of such other order.

§ 1078.13 Producer milk.

"Producer milk" means only that skim milk or butterfat contained in milk of producers that is (a) received at a pool plant directly from producers, or (b) diverted from a pool plant to a nonpool plant in accordance with the conditions set forth in § 1078.12.

§ 1078.14 Other source milk.

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk products specified in § 1078.40(b)(1) from any source other than producers, handlers described in § 1078.9(c), or pool plants;

(b) Receipts in packaged form from other plants of products specified in § 1078.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1078.40(b)(1), and products produced at the plant during the same month) from any source which are reprocessed, converted into, or combined with another product in the plant during the month; and

(d) Receipts of any milk product (other than a fluid milk product or a product specified in § 1078.40(b)(1)) for which the handler fails to establish a disposition.

§ 1078.15 Fluid milk product.

(a) Except as provided in paragraph (b) of this section, "fluid milk product" means any of the following products in fluid or frozen form:

(1) Milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted; and

(2) Any milk product not specified in paragraph (a)(1) of this section or in § 1078.40 (b) or (c)(1) (i) through (v) if it contains by weight at least 80 percent water and 6.5 percent nonfat milk solids and less than 9 percent butterfat and 20 percent total solids.

(b) The term "fluid milk product" shall not include:

(1) Evaporated or condensed milk (plain or sweetened), evaporated or condensed skim milk (plain or sweetened), formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, any product that contains by weight less than 6.5 percent nonfat milk solids, and whey; and

(2) The quantity of skim milk in any modified product specified in paragraph (a) of this section that is in excess of the quantity of skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

§ 1078.16 Fluid cream product.

"Fluid cream product" means cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

§ 1078.17 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted, or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid milk product, and contains less than 6 percent nonmilk fat (or oil).

§ 1078.18 Cooperative association.

"Cooperative association" means any cooperative marketing association which the Secretary determines, after application by the association:

(a) To be qualified under the provisions of the act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act"; and

(b) To have full authority in the sale of milk of its members and to be engaged in making collective sales of or marketing milk or its products for its members.

HANDLER REPORTS

§ 1078.30 Reports of receipts and utilization.

On or before the seventh day after the end of each month, each handler shall report for such month to the market administrator, in the detail and on the forms prescribed by the market administrator, as follows:

(a) Each handler, with respect to each of his pool plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the handler from the pool plant to other plants;

(2) Receipts of milk from handlers described in § 1078.9(c);

(3) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1078.40(b)(1); and

(6) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

(b) Each handler described in § 1078.9(c) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers; and

(2) The utilization or disposition of all such receipts.

(c) Each handler not specified in paragraphs (a) and (b) of this section shall report with respect to his receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

§ 1078.31 Payroll reports.

On or before the 20th day after the end of each month, each handler described in § 1078.9 (a) and (c) shall report to the market administrator his producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer:

(a) His name and address;

(b) The total pounds of milk received from such producer;

(c) The average butterfat content of such milk; and

(d) The price per hundredweight, the gross amount due, the amount and nature of any deductions, and the net amount paid.

§ 1078.32 Other reports.

(a) Each handler, except a producer-handler, shall report to the market administrator in the detail and on forms prescribed by the market administrator:

(1) On or before the first day other source milk is received in the form of any fluid milk product at his pool plant(s), his intention to receive such product and on or before the last day such product is received, his intention to discontinue receipt of such milk; and

(2) Prior to his diversion of producer milk to a nonpool plant, his intention to divert such milk, the proposed date or dates of such diversion and the plant to which such milk is to be diverted.

(b) In addition to the reports required pursuant to §§ 1078.30 and 1078.31 and paragraph (a) of this section, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligation under the order.

CLASSIFICATION OF MILK

§ 1078.40 Classes of utilization.

Except as provided in § 1078.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1078.30 shall be classified as follows:

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product, except as otherwise provided in paragraphs (b) and (c) of this section; and

(2) Not specifically accounted for as Class II or Class III milk.

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid cream product, eggnog, yogurt, and any product containing 6 percent or more nonmilk fat (or oil) that resembles a fluid cream product, eggnog, or yogurt, except as otherwise provided in paragraph (c) of this section;

(2) In packaged inventory at the end of the month of the products specified in paragraph (b)(1) of this section;

(3) In bulk fluid milk products and bulk fluid cream products disposed of to any commercial food processing establishment (other than a milk or filled milk plant) at which food products (other than milk products and filled milk) are processed and from which there is no disposition of fluid milk products or fluid cream products other than those received in consumer-type packages; and

(4) Used to produce:

(i) Cottage cheese, low fat cottage cheese, and dry curd cottage cheese;

(ii) Milkshake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts, and frozen dessert mixes;

(iii) Any concentrated milk product in bulk, fluid form other than that specified in paragraph (c)(1)(iv) of this section;

(iv) Plastic cream, frozen cream, and anhydrous milkfat;

(v) Custards, puddings, and pancake mixes; and

(vi) Formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers.

(c) *Class III milk.* Class III milk shall be all skim milk and butterfat:

(1) Used to produce:

(i) Cheese (other than cottage cheese, low fat cottage cheese, and dry curd cottage cheese);

(ii) Butter;

(iii) Any milk product in dry form;

(iv) Any concentrated milk product in bulk, fluid form that is used to produce a Class III product;

(v) Evaporated or condensed milk (plain or sweetened) in a consumer-type package and evaporated or condensed skim milk (plain or sweetened) in a consumer-type package; and

(vi) Any product not otherwise specified in this section;

(2) In inventory at the end of the month of fluid milk products in bulk or packaged form and products specified in paragraph (b)(1) of this section in bulk form;

(3) In fluid milk products and products specified in paragraph (b)(1) of this section that are disposed of by a handler for animal feed;

(4) In fluid milk products and products specified in paragraph (b)(1) of this section that are dumped by a handler if the market administrator is notified of such dumping in advance and is given the opportunity to verify such disposition;

(5) In skim milk in any modified fluid milk product that is in excess of the quantity of skim milk in such product that was included within the fluid milk product definition pursuant to § 1078.15; and

(6) In shrinkage assigned pursuant to § 1078.41(a) to the receipts specified in § 1078.41(a)(2) and in shrinkage specified in § 1078.41 (b) and (c).

§ 1078.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to §1078.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraph (b)(1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) In other source milk not specified in paragraph (b)(1) through (6) of this section which was received in the form of a bulk fluid milk product or a bulk fluid cream product;

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in paragraph (a)(1) of this section that is not in excess of:

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant and milk received from a handler described in § 1078.9(c));

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1078.9(c), except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be 2 percent;

(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer milk diverted from such plant by the plant operator to another plant, except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be zero;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other pool plants;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other order plants, excluding the quantity for which Class II or Class III classification is requested by the operators of both plants;

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received from unregulated supply plants, excluding the quantity for which Class II or Class III classification is requested by the handler; and

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products transferred to other plants that is not in excess of the respective amounts of skim milk and butterfat to which percentages are applied in paragraph (b) (1), (2), (4), (5), and (6) of this section; and

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1078.9(c), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

§ 1078.42 Classification of transfers and diversions.

(a) *Transfers to pool plants.* Skim milk or butterfat transferred in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant shall be classified as Class I milk unless the operators of both plants request the same classification in another class. In either case, the classification of such transfers shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant after the computations pursuant to § 1078.44(a)(12) and the corresponding step of § 1078.44(b);

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1078.44(a)(7) or the corresponding step of § 1078.44(b), the skim milk or butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor-handler received during the month other source milk to be allocated pursuant to § 1078.44(a)(11) or (12) or the corresponding steps of § 1078.44(b), the skim milk or butterfat so transferred, up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant.

(b) *Transfers and diversions to other order plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to an other order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the pool plant from the other order plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in paragraph (b) (1), (2), or (3) of this section;

(1) If transferred as packaged fluid milk products, classification shall be in the classes to which allocated as a fluid milk product under the other order;

(2) If transferred in bulk form, classification shall be in the classes to which allocated under the other order (including allocation under the conditions set forth in paragraph (b)(3) of this section);

(3) If the operators of both plants so request in their reports of receipts and utilization filed with their respective market administrators, transfers or diversions in bulk form shall be classified as Class II or Class III milk to the extent of such utilization available for such classification pursuant to the allocation provisions of the other order;

(4) If information concerning the classes to which such transfers or diversions were allocated under the other order is not available to the market administrator for the purpose of establishing classification under this paragraph, classification shall be as Class I, subject to adjustment when such information is available;

(5) For purposes of this paragraph, if the other order provides for a different number of classes of utilization than is provided for under this part, skim milk or butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I milk, and skim milk or butterfat allocated to the other classes shall be classified as Class III milk; and

(6) If the form in which any fluid milk product that is transferred to an other order plant is not defined as a fluid milk product under such other order, classification under this paragraph shall be in accordance with the provisions of § 1078.40.

(c) *Transfers to producer-handlers.* Skim milk or butterfat transferred in the following forms from a pool plant to a producer-handler under this or any other Federal order shall be classified:

(1) As Class I milk, if transferred in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it by the market administrator, if transferred in the form of a bulk fluid cream product. For this purpose, the producer-handler's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to his receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) *Transfers and diversions to other nonpool plants.* Skim milk or butterfat transferred or diverted in the following forms from a pool plant to a nonpool plant that is not an other order plant or a producer-handler plant shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in paragraph (d)(2)(i) (*a*) and (*b*) of this section are met, transfers or diversions in bulk form shall be classified on the basis of the assignment of the nonpool plant's utilization to its receipts as set forth in paragraph (d)(2) (ii) through (viii) of this section:

(*a*) The transferor-handler or divertor-handler claims such classification in his report of receipts and utilization filed pursuant to § 1078.30 for the month within which such transaction occurred; and

(*b*) The nonpool plant operator maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available for verification purposes if requested by the market administrator;

(ii) Route disposition of fluid milk products in the marketing area of each Federal milk order from the nonpool plant and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence;

(*a*) Pro rata to receipts of packaged fluid milk products at such nonpool plant from pool plants;

(*b*) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from other order plants;

(*c*) Pro rata to receipts of bulk fluid milk products at such nonpool plant from pool plants; and

(*d*) Pro rata to any remaining unassigned receipts of bulk fluid milk products at such nonpool plant from other order plants;

(iii) Any remaining Class I disposition of packaged fluid milk products from the nonpool plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from pool plants and other order plants;

(iv) Transfers of bulk fluid milk products from the nonpool plant to a plant fully regulated under any Federal milk order, to the extent that such transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the transferee-plant, shall be assigned to the extent possible in the folowing sequence:

(*a*) Pro rata to receipts of fluid milk products at such nonpool plant from pool plants; and

(*b*) Pro rata to any remaining unassigned receipts of fluid milk products at such nonpool plant from other order plants;

(v) Any remaining unassigned Class I disposition from the nonpool plant shall be assigned to the extent possible in the following sequence:

(*a*) To such nonpool plant's receipts from dairy farmers who the market administrator determines constitute regular sources of Grade A milk for such nonpool plant; and

(b) To such nonpool plant's receipts of Grade A milk from plants not fully regulated under any Federal milk order which the market administrator determines constitute regular sources of Grade A milk for such nonpool plant;

(vi) Any remaining unassigned receipts of bulk fluid milk products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class I utilization, then to Class III utilization, and then to Class II utilization at such nonpool plant;

(vii) Receipts of bulk fluid cream products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class III utilization, then to any remaining Class II utilization, and then to Class I utilization at such nonpool plant; and

(viii) In determining the nonpool plant's utilization for purposes of this subparagraph, any fluid milk products and bulk fluid cream products transferred from such nonpool plant to a plant not fully regulated under any Federal milk order shall be classified on the basis of the second plaint's utilization using the same assignment priorities at the second plant that are set forth in this subparagraph.

§ 1078.43 General classification rules.

In determining the classification of producer milk pursuant to § 1078.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1078.30 and shall compute separately for each pool plant and for each cooperative association with respect to milk for which it is the handler pursuant to § 1078.9(c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1078.40, 1078.41, and 1078.42;

(b) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids; and

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1078.9(c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1078.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1078.9(a) for each of his pool plants separately and of each handler described in § 1078.9(c) by allocating the handler's receipts of skim milk and butterfat to his utilization as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1078.41 (b);

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any payment obligation under any order;

(3) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid products received in packaged form from an other order plant as follows:

(i) From Class III milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(4) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 1078.40(b)(1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(5) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1078.40(b)(1) that were in inventory at the beginning of the month in packaged form, but not in excess of the pounds of skim milk remaining in Class II. This subparagraph shall apply only if the pool plant was subject to the provisions of this subparagraph or comparable provisions of another Federal milk order in the immediately preceding month;

(6) Substract from the remaining pounds of skim milk in Class II the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or a fluid cream product) that is used to produce, or added to, any product specified in § 1078.40(b), but not in excess of the pounds of skim milk remaining in Class II;

(7) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Other source milk (except that received in the form of a fluid milk product) and, if paragraph (a)(5) of this section applies, packaged inventory at the beginning of the month of products specified in § 1078.40(b)(1) that was not subtracted pursuant to paragraph (a)(4), (5), and (6) of this section;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established;

(iii) Receipts of fluid milk products from unidentified sources;

(iv) Receipts of fluid milk products from a producer-handler as defined under this or any other Federal milk order; and

(v) Receipts of reconstituted skim milk in filled milk from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2) of this section;

(8) Subtract in the order specified below from the pounds of skim milk remaining in Class II and Class III, in sequence beginning with Class III:

(i) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a)(2) and (7)(v) of this section for which the handler requests a classification other than Class I, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(ii) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2), (7)(v), and (8)(i) of this section which are in excess of the pounds of skim milk determined pursuant to paragraph (a)(8)(ii) (*a*) through (*c*) of this section. Should the pounds of skim milk to be subtracted from Class II and Class III combined exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount:

(*a*) Multiply by 1.25 the sum of the pounds of skim milk remaining in Class I at this allocation step at all pool plants of the handler (excluding any duplication of Class I utilization resulting from reported Class I transfers between pool plants of the handler);

(*b*) Subtract from the above result the sum of the pounds of skim milk in receipts at all pool plants of the handler of producer milk, fluid milk products from pool plants of other handlers, and bulk fluid milk products from other order plants; and

(*c*) Multiply any plus quantity resulting above by the percentage that the receipts of skim milk in fluid milk products from unregulated supply plants that remain at this pool plant is of all such receipts remaining at this allocation step at all pool plants of the handler; and

(iii) The pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant, if Class II or Class III classification is requested by the operator of the other order plant and the handler, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(9) Subtract from the pounds of skim milk remaining in each class, in series

beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 1078.40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to paragraph (a) (5) and (7)(i) of this section;

(10) Add to the remaining pounds of skim milk in Class III the pounds of skim milk subtracted pursuant to paragraph (a)(1) of this section;

(11) Subject to the provisions of paragraph (a)(11) (i) and (ii) of this section, subtract from the pounds of skim milk remaining in each class at the plant, pro rata to the total pounds of skim milk remaining in Class I and in Class II and Class III combined at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler), with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, the pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a) (2), (7)(v), and (8) (i) and (ii) of this section and that were not offset by transfers or diversions of fluid milk products to the same unregulated supply plant from which fluid milk products to be allocated at this step were received:

(i) Should the pounds of skim milk to be subtracted from Class II and Class III combined pursuant to this subparagraph exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(ii) Should the pounds of skim milk to be subtracted from Class I pursuant to this subparagraph exceed the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount, beginning with the nearest plant at which Class I utilization is available;

(12) Subject to the provisions of paragraph (a)(12) (i) and (ii) of this section, subtract from the pounds of skim milk remaining in each class at the plant, pro rata to the total pounds of skim milk remaining in Class I and in Class II and Class III combined at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler), with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, the pounds of skim milk in receipts of bulk fluid milk products from an other order plant that were not subtracted pursuant to paragraph (a)(8)(iii) of this section and that were not offset by transfers or diversions of bulk fluid milk products to the same other order plant from which fluid milk products to be allocated at this step were received:

(i) Should the pounds of skim milk to be subtracted from Class II and Class III combined pursuant to this subparagraph exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount:

(ii) Should the pounds of skim milk to be subtracted from Class I pursuant to this subparagraph exceed the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount, 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 § 1078.42(a); and

(14) If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) The quantity of producer milk in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to paragraph (a)(14) of this section and the corresponding step of paragraph (b) of this section.

§ 1078.45 Market administrator's reports concerning classification.

The market administrator shall make the following reports concerning classification:

(a) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from an other order plant, the class to which such receipts are allocated pursuant to § 1078.44 on the basis of such report, and, thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

(b) Furnish to each handler operating a pool plant who has shipped fluid milk products or bulk fluid cream products to an other order plant the class to which such shipments were allocated by the market administrator of the other order on the basis of the report by the receiving handler, and, as necessary, any changes in such allocation arising from the verification of such report:

Class Prices

§ 1078.50 Class prices.

Subject to the provisions of § 1078.52, the class prices for the month per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $1.25.

(b) *Class II price.* The Class II price shall be the basic formula price for the month plus 10 cents.

(c) *Class III price.* The Class III price shall be the basic formula price for the month.

§ 1078.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential (rounded to the nearest one-tenth cent) per one-tenth percent butterfat shall be 0.12 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month. For the purpose of computing the Class I price, the resulting price shall be not less than $4.33.

§ 1078.52 Plant location adjustments for handlers.

(a) The following zones are defined for the purpose of determining location adjustments:

(1) "Zone 1" means all the territory in the Iowa counties of Humboldt, Wright, Franklin, Butler, Bremer, Web-

ster, Hamilton, Hardin, Grundy, Black Hawk, and Buchanan.

(2) "Zone 2" means all the territory in the Iowa counties of Marshall, Tama, Linn, and Johnson.

(3) "Zone 3" means all the territory in the Iowa counties of Hancock, Cerro Gordo, Floyd, and Chickasaw and the city of Osage, Iowa.

(4) "Zone 4" means all the territory in Fayette County, Iowa, and the Minnesota counties of Freeborn and Mower.

(b) For milk received from producers at a pool plant located in Zone 2, 3, or 4 and classified as Class I milk, the price specified in § 1078.50(a) shall be adjusted by the following amount:

(1) Zone 2—plus 8 cents.

(2) Zone 3—minus 5 cents.

(3) Zone 4—minus 10 cents.

(c) For milk received from producers at a pool plant located outside Zones 1, 2, 3, and 4 and classified as Class I milk, the price specified in § 1078.50(a) shall be reduced 10 cents and, if the plant is located 65 miles or more by the shortest hard-surfaced highway distance as determined by the market administrator from the city halls of each of the cities of Fort Dodge, Marshalltown, Mason City, and Waterloo, Iowa, shall be reduced an additional 1.5 cents for each 10 miles or fraction thereof in excess of 65 miles that such plant is from the nearest of such city halls.

(d) For purposes of calculating the location adjustment applicable pursuant to this section, fluid milk products which are transferred between pool plants shall be assigned to the Class I milk remaining in the transferee-plant after calculations pursuant to § 1078.44(a)(12) and the corresponding step of § 1078.44(b) that is in excess of receipts at such plant from producers and handlers described in § 1078.9(c), such assignment to transferor-plants to be made first to plants at which a plus location adjustment is applicable, next at which no location adjustment is applicable and then in sequence beginning with the plant at which the least location adjustment would apply.

§ 1078.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month and the Class II and Class III prices for the preceding month.

§ 1078.54 Equivalent price.

If for any reason a price or pricing constituent required by this part for computing class prices or for other purposes is not available as prescribed in this part, the market administrator shall use a price or pricing constituent determined by the Secretary to be equivalent to the price or pricing constituent that is required.

UNIFORM PRICE

§ 1078.60 Handler's value of milk for computing uniform price.

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1078.44 by the applicable class prices and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1078.44(a)(14) and the corresponding step of § 1078.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1078.74, that are applicable at the location of the pool plant;

(c) Add the following:

(1) The amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the pool plant for the current month by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1078.44(a)(9) and the corresponding step of § 1078.44(b); and

(2) The amount obtained from multiplying the difference between the Class III price for the preceding month and the Class II price for the current month by the lesser of:

(i) The hundredweight of skim milk and butterfat subtracted from Class II pursuant to § 1078.44(a)(9) and the corresponding step of § 1078.44(b) for the current month; or

(ii) The hundredweight of skim milk and butterfat remaining in Class III (exclusive of shrinkage) after the computations pursuant to § 1078.44(a)(11) and the corresponding step of § 1078.44(b) for the preceding month, less the hundredweight of skim milk and butterfat specified in paragraph (c)(1) of this section; and

(d) Add or subtract, as the case may be, an amount necessary to correct errors discovered by the market administrator in the verification of reports of such handler of his receipts and utilization of skim milk and butterfat for previous months.

§ 1078.61 Computation of uniform price for each handler.

For each month the market administrator shall compute a uniform price for the producer milk received by each handler as follows:

(a) Add to and subtract from the amount computed pursuant to § 1078.60, the totals of the location adjustments to be made pursuant to § 1078.75;

(b) Add if a deduction was made, or subtract if an addition was made, in computing the uniform price for such handler to the nearest cent for the preceding month the amount of such adjustment; and

(c) Divide the resulting amount by the total hundredweight of producer milk received by such handler. The quotient, adjusted to the nearest cent, shall be the uniform price for such handler for producer milk of 3.5 percent butterfat content received at plants in Zone 1. Uniform prices at plants outside Zone 1 shall be adjusted pursuant to § 1078.75.

§ 1078.62 Announcement of uniform price for each handler and butterfat differential.

The market administrator shall announce publicly on or before:

(a) The fifth day after the end of each month the butterfat differential for such month; and

(b) The 10th day after the end of each month the uniform price for each handler for such month.

PAYMENTS FOR MILK

§ 1078.73 Payments to producers and to cooperative associations.

Each handler shall make payment to each producer for milk received from such producer as follows:

(a) On or before the 14th day after the end of each month, for milk received during such month, an amount computed at not less than the uniform price per hundredweight pursuant to § 1078.61, as adjusted pursuant to § 1078.74, plus or minus adjustments for errors made in previous payments to such producer; and less (1) location adjustments pursuant to § 1078.75, (2) deductions for marketing services pursuant to § 1078.86, and (3) proper deductions authorized by such producer: *Provided*, That with respect to producers whose milk was caused to be delivered to such handler by a cooperative association which is authorized to collect payment for such milk the handler shall, if requested by the cooperative association, pay such cooperative association on or before the 12th day after the end of each month an amount equal to the sum of the individual payments otherwise payable to such producers in accordance with this paragraph;

(b) In making the payments to producers pursuant to paragraph (a) of this section, each handler shall furnish each producer or cooperative association from whom he has received milk with a supporting statement in such form that it may be retained by the producer, which shall show for each month:

(1) The month and identity of the handler and of the producer;

(2) The daily and total pounds and the average butterfat content of milk received from such producer;

(3) The minimum rate or rates at which payment to such producer is required pursuant to the order;

(4) The rate which is used in making the payment, if such rate is other than the applicable minimum rate;

(5) The amount or the rate per hundredweight and nature of each deduction claimed by the handler; and

(6) The net amount of payment to such producer or cooperative association

§ 1078.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.115 times the simple average of the wholesale selling prices (using the midpoint of

any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month.

§ 1078.75 Plant location adjustments for producers.

The uniform prices for milk received from producers at a pool plant shall be adjusted according to the location of the pool plant at the rates set forth in § 1078.52.

§ 1078.76 [Reserved]

§ 1078.77 Adjustment of accounts.

Whenever verification by the market administrator of payment by a handler discloses errors resulting in money due a producer, a cooperative association, or the market administrator from such handler, or due such handler from the market administrator, the market administrator shall notify such handler of any amount so due and payment thereof shall be made on or before the next date for making payments, as set forth in the provisions under which such error occurred.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

§ 1078.85 Assessment for order administration.

As his pro rata share of the expense of administration of the order, each handler shall pay to the market administrator on or before the 15th day after the end of the month 4 cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to (a) producer milk, (b) other source milk allocated to Class I pursuant to § 1078.44 (a) (7) and (11) and the corresponding steps of § 1078.44(b), and (c) Class I milk disposed of from a partially regulated distributing plant on routes in the marketing area that exceeds the hundredweight of Class I milk received during the month at such plant from pool plants and other order plants.

§ 1078.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler in making payments to each producer pursuant to § 1078.73, shall deduct 5 cents per hundredweight or such lesser amount as the Secretary may prescribe with respect to all milk received by such handler from such producer (except such handler's own farm production) during the month, and shall pay such deductions to the market administrator not later than the 15th day after the end of the month. Such money shall be used by the market administrator to verify or establish weights, samples, and tests of milk received by handlers from such producers during the month and to provide such producers with market information. Such services shall be performed in whole or in part by the market administrator or by an agent engaged by and responsible to him.

(b) In the case of producers for whom a cooperative association is actually performing, as determined by the Secretary, the services set forth in paragraph (a) of this section, each handler shall make, in lieu of the deductions specified in paragraph (a) of this section, such deductions as are authorized by such producers and, on or before the 15th day after the end of each month, pay over such deductions to the association rendering such services.

PART 1079—MILK IN DES MOINES, IOWA, MARKETING AREA

Subpart—Order Regulating Handling

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AUTHORITY: Secs. 1–19, 48 Stat. 31, as amended (7 U.S.C. 601–674).

Subpart—Order Regulating Handling

GENERAL PROVISIONS

§ 1079.1 General provisions.

The terms, definitions, and provisions in Part 1000 of this chapter are hereby incorporated by reference and make a part of this order.

§ 1079.2 Des Moines, Iowa, marketing area.

"Des Moines, Iowa, marketing area" (hereinafter called the "marketing area"), means all the territory within the boundaries of the city of Grinnell and the counties of Adair, Appanoose, Bonne, Clarke, Dallas, Decatur, Greene, Guthrie, Jasper, Lucas, Madison, Mahaska, Marion, Monroe, Polk, Story, Union, Warren, Wappello, and Wayne, all in the State of Iowa, including territory within such boundaries which is occupied by government (municipal, State or Federal) reservations, installations, institutions, or other establishments.

§ 1079.3 [Reserved]

§ 1079.4 [Reserved]

§ 1079.5 Distributing plant.

"Distributing plant" means a plant which is approved by a duly constituted regulatory agency for the processing or packaging of Grade A milk and from which any fluid milk product is disposed of during the month on routes (including routes operated by vendors) or through plant stores to retail or wholesale outlets (except pool plants) located in the marketing area.

§ 1079.6 Supply plant.

"Supply plant" means a plant from which milk or skim milk, acceptable to a duly constituted regulatory agency for distribution in the marketing area under a Grade A label, is shipped during the month to a pool plant qualified pursuant to § 1079.7.

§ 1079.7 Pool plant.

Except as provided in paragraph (c) of this section, "pool plant" means:

(a) A distributing plant:

(1) From which the volume of Class I filled milk, disposed of during the month either on routes (including routes operated by vendors) or through plant stores to retail or wholesale outlets or moved to other plants, less receipts of packaged fluid milk products, other than filled milk, from other pool distributing plants, is not less than 35 percent of the combined Grade A milk received in bulk form at such plant or diverted therefrom by the plant operator or a cooperative association to a nonpool plant as producer milk; and not less than 15 percent of such receipts or an average of not less than 7000 pounds per day

whichever is less, is so disposed of to such outlets in the marketing area; or

(2) That qualified as a pool plant in each of the immediately preceding three months on the basis of performance standards described in paragraph (a)(1) of this section.

(b) A supply plant:

(1) From which the volume of fluid milk products, except filled milk, shipped during the month to pool plants qualified pursuant to paragraph (a) of this section is equal to not less than 35 percent (30 percent for each of the months of April through August) of the Grade A milk received at such plant from dairy farmers and handlers described in § 1079.9(c), and diverted therefrom by the plant operator or a cooperative association as producer milk pursuant to § 1079.13: *Provided*, That if such shipments are not less than 50 percent during the immediately preceding period of September through November, such plant shall be a pool plant during each of the months of March through June, unless written application is filed with the market administrator on or before the 15th day of any of the months of March through June to be designated a nonpool plant for such month and for each subsequent month through June of the same year; or

(2) That qualified as a pool plant in each of the immediately preceding three months on the basis of performance standards described in paragraph (b)(1) of this section with respect to shipment to plants qualified pursuant to paragraph (a)(1) of this section.

(c) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) A distributing plant or a supply plant during any month in which such plant would be subject to the classification and pricing provisions of another order issued pursuant to the Act unless the disposition of fluid milk products, except filled milk, from such plant to pool plants qualified pursuant to this section and to retail and wholesale outlets in the Des Moines, Iowa, marketing area exceeds such disposition to retail and wholesale outlets in such other marketing area and to pool plants regulated by such other order except in the following circumstances:

(i) If a distributing plant were qualified pursuant to paragraph (a) of this section during each of the 3 immediately preceding months, it would continue to be subject to all the provisions of this part until after the third consecutive month in which it remains so qualified and has a greater proportion of its fluid milk product disposition, except filled milk, made in the above-described manner in such other marketing area, unless, notwithstanding the provisions of this paragraph, it is regulated under such other order; or

(ii) A distributing plant qualified pursuant to paragraph (a) of this section that is fully regulated under another Federal order but which has greater fluid milk product (except filled milk) disposition during the month on routes in the Des Moines marketing area and to pool plants qualified on the basis of route distribution in the Des Moines marketing area than in such other Federal order marketing area; and

(3) That portion of a plant that is physically apart from the Grade A portion of such plant, is operated separately and is not approved by any duly constituted regulatory agency for the receiving, processing, or packaging of any fluid milk product for Grade A disposition.

§ 1079.8 Nonpool plant.

"Nonpool plant" means any milk or filled milk receiving, manufacturing, or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant, from which fluid milk products in consumer-type packages or dispenser units are distributed on routes in the marketing area during the month.

(d) "Unregulated supply plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant from which fluid milk products are shipped during the month to a pool plant.

§ 1079.9 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of one or more pool plants;

(b) Any cooperative association with respect to the milk of producers it diverts from a pool plant pursuant to § 1079.13;

(c) Any cooperative association with respect to milk it receives for its account from the farm of a producer in a tank truck owned and operated by, or under the control of, such association, for delivery to a pool plant operated by another person, unless both the cooperative association and the operator of the pool plant notify the market administrator that the plant operator will be responsible for payment for the milk and is purchasing the milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples. Milk for which the cooperative association is the qualified handler pursuant to this paragraph shall be deemed to have been received at the location of the pool plant to which such milk is delivered;

(d) Any person in his capacity as the operator of a partially regulated distributing plant;

(e) Any person defined as a producer-handler;

(f) Any person in his capacity as the operator of an other order plant described in § 1079.7(c); and

(g) Any person in his capacity as the operator of an unregulated supply plant.

§ 1079.10 Producer-handler.

"Producer-handler" means any person who operates a dairy farm and a distributing plant but who receives no milk from other dairy farmers or from sources other than pool plants and whose disposition of fluid milk products does not exceed that (a) received from a pool plant, (b) processed from milk of his own production, or (c) processed from fluid milk received from a pool plant.

§ 1079.11 [Reserved]

§ 1079.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk in compliance with the Grade A inspection requirements of a duly constituted regulatory agency, and which milk is:

(1) Received at a pool plant;

(2) Diverted as producer milk pursuant to § 1079.13; or

(3) Received by a handler described in § 1079.9(c).

(b) "Producer" shall not include:

(1) A producer-handler as defined in any order (including this part) issued pursuant to the Act;

(2) Any person with respect to milk produced by him which is diverted to a pool plant from an other order plant if the other order designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to § 1079.44(a)(8)(iii) and the corresponding step of § 1079.44(b); and

(3) Any person with respect to milk produced by him which is reported as diverted to an other order plant if any portion of such person's milk so moved is assigned to Class I under the provisions of such other order.

§ 1079.13 Producer milk.

"Producer milk" shall be that skim milk and butterfat in milk from producers that is:

(a) Received at a pool plant directly from a producer;

(b) Received by a handler described in § 1079.9(c); or

(c) Diverted by the operator of a pool plant or by a cooperative association to a nonpool plant other than a producer-handler plant, subject to the following conditions:

(1) Such milk shall be accounted for as received by the diverting handler at the location of the nonpool plant;

(2) Milk of a producer shall not be eligible for diversion from a pool plant under this section unless during the month at least one delivery is made to a pool plant;

(3) A cooperative association may divert the milk of any producer (other than producer milk diverted pursuant to paragraph (c)(4) of this section). The total quantity of milk so diverted may not exceed 50 percent in the months of September through March, and 70 percent in other months, of the milk for which the cooperative is the handler pursuant to § 1079.9(c) and producer

milk which the association causes to be delivered to pool plants, or diverted therefrom during the month;

(4) The operator of a pool plant (other than a cooperative association) may divert for his account the milk of any producer (other than producer milk diverted pursuant to paragraph (c)(3) of this section). The total quantity so diverted may not exceed 50 percent in the months of September through March, and 70 percent in other months, of the milk received at or diverted from such pool plant from producers and for which the operator of such plant is the handler during the month;

(5) Any milk diverted in excess of the limits prescribed pursuant to paragraph (c) (3) and (4) of this section shall not be producer milk and, if the diverting handler fails to designate the dairy farmers whose milk is not producer milk, then no milk diverted by such handler during the month shall be producer milk; and

(6) To the extent that it would result in nonpool plant status for the pool plant from which diverted, milk diverted by a cooperative association from the pool plant of another handler shall not be producer milk.

§ 1079.14 Other source milk.

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk products specified in § 1079.40 (b) (1) from any source other than producers, handlers described in § 1079.9 (c), or pool plants;

(b) Receipts in packaged form from other plants of products specified in § 1079.40(b) (1);

(c) Products (other than fluid milk products, products specified in § 1079.40 (b) (1), and products produced at the plant during the same month) from any source which are reprocessed, converted into, or combined with another product in the plant during the month; and

(d) Receipts of any milk product (other than a fluid milk product or a product specified in § 1079.40(b) (1)) for which the handler fails to establish a disposition.

§ 1079.15 Fluid milk product.

(a) Except as provided in paragraph (b) of this section, "fluid milk product" means any of the following products in fluid or frozen form:

(1) Milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted; and

(2) Any milk product not specified in paragraph (a) (1) of this section or in § 1079.40 (b) or (c) (1) (i) through (v) if it contains by weight at least 80 percent water and 6.5 percent nonfat milk solids and less than 9 percent butterfat and 20 percent total solids.

(b) The term "fluid milk product" shall not include:

(1) Evaporated or condensed milk (plain or sweetened), evaporated or condensed skim milk (plain or sweetened), formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, any product that contains by weight less than 6.5 percent nonfat milk solids, and whey; and

(2) The quantity of skim milk in any modified product specified in paragraph (a) of this section that is in excess of the quantity of skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

§ 1079.16 Fluid cream product.

"Fluid cream product" means cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

§ 1079.17 Filled milk.

"Filled milk" means any combination or nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted, or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid milk product, and contains less than 6 percent nonmilk fat (or oil).

§ 1079.18 Cooperative association.

"Cooperative association" means any cooperative marketing association which the Secretary determines after application by the association:

(a) To be qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act"; and

(b) To have full authority in the sale of milk of its members and is engaged in making collective sales of or marketing milk or its products for its members.

HANDLER REPORTS

§ 1079.30 Reports of receipts and utilization.

On or before the seventh day after the end of each month, each handler shall report for such month to the market administrator, in the detail and on the forms prescribed by the market administrator, as follows:

(a) Each handler, with respect to each of his pool plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the handler from the pool plant to other plants;

(2) Receipts of milk from handlers described in § 1079.9(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 § 1079.40(b) (1); and

(6) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. Such report shall show also the quantity of any reconstituted skim milk in route disposition of fluid milk products in the marketing area.

(c) Each handler described in § 1079.9 (b) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers;

(2) The utilization or disposition of all such receipts; and

(3) With respect to a handler described in § 1079.9(b), the plant from which such milk is diverted.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to his receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

§ 1079.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1079.9 (a), (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 § 1079.76 (b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1079.32 Other reports.

(a) Each handler, except a producer-handler, shall report to the market administrator in the detail and on forms prescribed by the market administrator:

(1) On or before the first day other source milk is received in the form of any fluid milk product at his pool plant his intention to receive such product, and on or before the last day such product is received, his intention to discontinue receipt of such product; and

(2) Prior to his diversion of producer milk to a nonpool plant, his intention to divert such milk, the proposed date or dates of such diversion and the plant to which such milk is to be diverted.

(b) In addition to the reports required pursuant to §§ 1079.30 and 1079.31 and paragraph (a) of this section, each handler shall report such other informa-

tion as the market administrator deems necessary to verify or establish such handler's obligation under the order.

CLASSIFICATION OF MILK

§ 1079.40 Classes of utilization.

Except as provided in § 1079.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1079.30 shall be classified as follows:

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product, except as otherwise provided in paragraphs (b) and (c) of this section; and

(2) Not specifically accounted for as Class II or Class III milk.

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid cream product, eggnog, yogurt, and any product containing 6 percent or more nonmilk fat (or oil) that resembles a fluid cream product, eggnog, or yogurt, except as otherwise provided in paragraph (c) of this section;

(2) In packaged inventory at the end of the month of the products specified in paragraph (b)(1) of this section;

(3) In bulk fluid milk products and bulk fluid cream products disposed of to any commercial food processing establishment (other than a milk or filled milk plant) at which food products (other than milk products and filled milk) are processed and from which there is no disposition of fluid milk products or fluid cream products other than those received in consumer-type packages; and

(4) Used to produce:

(i) Cottage cheese, low fat cottage cheese, and dry curd cottage cheese;

(ii) Milkshake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts, and frozen dessert mixes;

(iii) Any concentrated milk product in bulk, fluid form other than that specified in paragraph (c)(1)(iv) of this section;

(iv) Plastic cream, frozen cream, and anhydrous milkfat;

(v) Custards, puddings, and pancake mixes; and

(vi) Formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers.

(c) *Class III milk.* Class III milk shall be all skim milk and butterfat:

(1) Used to produce:

(i) Cheese (other than cottage cheese, low fat cottage cheese, and dry curd cottage cheese);

(ii) Butter;

(iii) Any milk product in dry form;

(iv) Any concentrated milk product in bulk, fluid form that is used to produce a Class III product;

(v) Evaporated or condensed milk (plain or sweetened) in a consumer-type package and evaporated or condensed skim milk (plain or sweetened) in a consumer-type package; and

(vi) Any product not otherwise specified in this section;

(2) In inventory at the end of the month of fluid milk products in bulk or packaged form and products specified in paragraph (b)(1) of this section in bulk form;

(3) In fluid milk products and products specified in paragraph (b)(1) of this section that are disposed of by a handler for animal feed;

(4) In fluid milk products and products specified in paragraph (b)(1) of this section that are dumped by a handler if the market administrator is notified of such dumping in advance and is given the opportunity to verify such disposition;

(5) In fluid milk products destroyed or lost under extraordinary circumstances;

(6) In skim milk in any modified fluid milk product that is in excess of the quantity of skim milk in such product that was included within the fluid milk product definition pursuant to § 1079.15; and

(7) In shrinkage assigned pursuant to § 1079.41(a) to the receipts specified in § 1079.41(a)(2) and in shrinkage specified in § 1079.41 (b) and (c).

§ 1079.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1079.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraph (b) (1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) In other source milk not specified in paragraph (b) (1) through (6) of this section which was received in the form of a bulk fluid milk product or a bulk fluid cream product;

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in paragraph (a)(1) of this section that is not in excess of:

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant);

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1079.9(c);

(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 § 1079.9(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.

§ 1079.42 Classification of transfers and diversions.

(a) *Transfers to pool plants.* Skim milk or butterfat transferred in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant or by a handler described in § 1079.9(c) to another handler's pool plant shall be classified as ClassI 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 § 1079.44(a)(12) and the corresponding step of § 1079.44(b);

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1079.44(a)(7) or the corresponding step of § 1079.44(b), the skim milk or butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor-handler received during the month other source milk to be allocated pursuant to § 1079.44(a)(11) or (12) or the corresponding steps of § 1079.44(b), the skim milk or butterfat so transferred, up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant.

(b) *Transfers and diversions to other order plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to an other order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the pool plant from the other order plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in paragraph (b)(1), (2) or (3) of this section;

(1) If transferred as packaged fluid milk products, classification shall be in the classes to which allocated as a fluid milk product under the other order;

(2) If transferred in bulk form, classification shall be in the classes to which allocated under the other order (including allocation under the conditions set forth in paragraph (b)(3) of this section);

(3) If the operators of both plants so request in their reports of receipts and utilization filed with their respective market administrators, transfers or diversions in bulk form shall be classified as Class II or Class III milk to the extent of such utilization available for such classification pursuant to the allocation provisions of the other order;

(4) If information concerning the classes to which such transfers or diversions were allocated under the other order is not available to the market administrator for the purpose of establishing classification under this paragraph, classification shall be as Class I, subject to adjustment when such information is available;

(5) For purposes of this paragraph, if the other order provides for a different number of classes of utilization than is provided for under this part, skim milk or butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I milk, and skim milk or butterfat allocated to the other classes shall be classified as Class III milk; and

(6) If the form in which any fluid milk product that is transferred to an other order plant is not defined as a fluid milk product under such other order, classification under this paragraph shall be in accordance with the provisions of § 1079.40.

(c) *Transfers to producer-handlers.* Skim milk or butterfat transferred in the following forms from a pool plant to a producer-handler under this or any other Federal order shall be classified:

(1) As Class I milk, if transferred in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it by the market administrator, if transferred in the form of a bulk fluid cream product. For this purpose, the producer-handler's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to his receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) *Transfers and diversions to other nonpool plants.* Skim milk or butterfat transferred or diverted in the following forms from a pool plant to a nonpool plant that is not an other order plant or a producer-handler plant shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in paragraph (d)(2)(i)(*a*) and (*b*) of this section are met, transfers or diversions in bulk form shall be classified on the basis of the assignment of the nonpool plant's utilization to its receipts as set forth in paragraph (d)(2)(ii) through (viii) of this section:

(*a*) The transferor-handler or divertor-handler claims such classification in his report of receipts and utilization filed pursuant to § 1079.30 for the month within which such transaction occurred; and

(*b*) The nonpool plant operator maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available for verification purposes if requested by the market administrator;

(ii) Route disposition of fluid milk products in the marketing area of each Federal milk order from the nonpool plant and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of packaged fluid milk products at such nonpool plant from pool plants;

(*b*) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from other order plants;

(*c*) Pro rata to receipts of bulk fluid milk products at such nonpool plant from pool plants; and

(*d*) Pro rata to any remaining unassigned receipts of bulk fluid milk products at such nonpool plant from other order plants;

(iii) Any remaining Class I disposition of packaged fluid milk products from the nonpool plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from pool plants and other order plants;

(iv) Transfers of bulk fluid milk products from the nonpool plant to a plant fully regulated under any Federal milk order, to the extent that such transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the transferee-plant, shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of fluid milk products at such nonpool plant from pool plants; and

(*b*) Pro rata to any remaining unassigned receipts of fluid milk products at such nonpool plant from other order plants;

(v) Any remaining unassigned Class I disposition from the nonpool plant shall be assigned to the extent possible in the following sequence:

(*a*) To such nonpool plant's receipts from dairy farmers who the market administrator determines constitute regular sources of Grade A milk for such nonpool plant; and

(*b*) To such nonpool plant's receipts of Grade A milk from plants not fully regulated under any Federal milk order which the market administrator determines constitute regular sources of Grade A milk for such nonpool plant;

(vi) Any remaining unassigned receipts of bulk fluid milk products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class I utilization, then to Class III utilization, and then to Class II utilization at such nonpool plant;

(vii) Receipts of bulk fluid cream products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class III utilization, then to any remaining Class II 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.

§ 1079.43 General classification rules.

In determining the classification of producer milk pursuant to § 1079.44 the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1079.30 and shall compute separately for each pool plant and for each cooperative association with respect to milk for which it is the handler pursuant to § 1079.9 (b) and (c) that was not received at a pool plant the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1079.40, 1079.41, and 1079.42;

(b) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids; and

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1079.9(b) and (c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1079.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk and milk received from a handler described in § 1079.9(c) for each handler described in § 1079.8(a) for each of his pool plants separately and the classification of producer milk of each handler described in § 1079.9(b) and (c) that was not received at a pool plant by allocating the handler's receipts of skim milk and butterfat to his utilization as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1079.41(b);

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products received in packaged form from an other order plant, except that to be subtracted pursuant to paragraph (a)(7)(vi) of this section, as follows:

(i) From Class III milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(4) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 1079.40(b)(1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(5) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1079.40(b)(1) that were in inventory at the beginning of the month in packaged form, but not in excess of the pounds of skim milk remaining in Class II. This subparagraph shall apply only if the pool plant was subject to the provisions of this subparagraph or comparable provisions of another Federal milk order in the immediately preceding month;

(6) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or a fluid cream product) that is used to produce, or added to, any product specified in § 1079.40(b), but not in excess of the pounds of skim milk remaining in Class II;

(7) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Other source milk (except that received in the form of a fluid milk product) and, if paragraph (a)(5) of this section applies, packaged inventory at the beginning of the month of products specified in § 1079.40(b)(1) that was not subtracted pursuant to paragraph (a)(4), (5), and (6) of this section;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established;

(iii) Receipts of fluid milk products from unidentified sources;

(iv) Receipts of fluid milk products from a producer-handler as defined under this or any other Federal milk order;

(v) Receipts of reconstituted skim milk in filled milk from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2) of this section; and

(vi) Receipts of reconstituted skim milk in filled milk from an other order plant that is regulated under any Federal milk order providing for individual-handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor-plant;

(8) Subtract in the order specified below from the pounds of skim milk 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 § 1079.9(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 § 1079.40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to paragraph (a)(5) and (7)(i) of this section;

(10) Add to the remaining pounds of skim milk in Class III the pounds of skim milk subtracted pursuant to paragraph (a)(1) of this section;

(11) Subject to the provisions of paragraph (a)(11) (i) and (ii) of this section, subtract from the pounds of skim milk remaining in each class at the plant, pro rata to the total pounds of skim milk remaining in Class I and in Class II and Class III combined at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler), with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, the pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a) (2), (7)(v), and (8) (i) and (ii) of this section and that were not offset by transfers or diversions of fluid milk products to the same unregulated supply plant from which fluid milk products to be allocated at this step were received:

(i) Should the pounds of skim milk to be subtracted from Class II and Class III combined pursuant to this subparagraph exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the

pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(ii) Should the pounds of skim milk to be subtracted from Class I pursuant to this subparagraph exceed the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount, beginning with the nearest plant at which Class I utilization is available;

(12) Subtract in the manner specified below from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraph (a) (7)(vi) and (8)(iii) of this section:

(i) Subject to the provisions of paragraph (a)(12) (ii), (iii), and (iv) of this section, such subtraction shall be pro rata to the pounds of skim milk in Class I and in Class II and Class III combined, with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, with respect to whichever of the following quantities represents the lower proportion of Class I milk:

(*a*) The estimated utilization of skim milk of all handlers in each class as announced for the month pursuant to § 1079.45(a); or

(*b*) The total pounds of skim milk remaining in each class at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler);

(ii) Should the proration pursuant to paragraph (a)(12(i) of this section result in the total pounds of skim milk at all pool plants of the handler that are to be subtracted at this allocation step from Class II and Class III combined exceeding the pounds of skim milk remaining in Class II and Class III at all such plants, the pounds of such excess shall be subtracted from the pounds of skim milk remaining in Class I after such proration at the pool plants at which such other source milk was received;

(iii) Except as provided in paragraph (a)(12(ii) of this section, should the computations pursuant to paragraph (a)(12) (i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class II and Class III combined that exceeds the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(iv) Except as provided in paragraph (a)(12)(ii) of this section, should the computations pursuant to paragraph (a)(12) (i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class I that exceeds the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount beginning with the nearest plant at which Class I utilization is available;

(13) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products and bulk fluid cream products from another pool plant or a handler described in § 1079.9(c) according to the classification of such products pursuant to § 1079.42(a); and

(14) If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) The quantity of producer milk in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to paragraph (a)(14) of this section and the corresponding step of paragraph (b) of this section.

§ 1079.45 Market administrator's reports and announcements concerning classification.

The market administrator shall make the following reports and announcements concerning classification:

(a) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1079.44(a)(12) and the corresponding step of § 1079.44(b), estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose.

(b) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from an other order plant, the class to which such receipts are allocated pursuant to § 1079.44 on the basis of such report, and, thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

(c) Furnish to each handler operating a pool plant who has shipped fluid milk products or bulk fluid cream products to an other order plant the class to which such shipments were allocated by the market administrator of the other order on the basis of the report by the receiving handler, and, as necessary, any changes in such allocation arising from the verification of such report.

(d) On or before the 10th day after the end of each month, report to each cooperative association, which so requests, the percentage of the milk caused to be delivered by the cooperative association or by its members to the pool plant of each handler during the month that was utilized in each class. For the purpose of this report the milk so delivered shall be allocated to each class in the same ratio as all producer milk received at such plant during the month.

Class Prices

§ 1079.50 Class prices.

Subject to the provisions of § 1079.52, the class prices for the month per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $1.40.

(b) *Class II price.* The Class II price shall be the basic formula price for the month plus 10 cents.

(c) *Class III price.* The Class III price shall be the basic formula price for the month.

§ 1079.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential (rounded to the nearest one-tenth cent) per one-tenth percent butterfat shall be 0.12 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month. For the purpose of computing the Class I price, the resulting price shall be not less than $4.33.

§ 1079.52 Location adjustments for handlers.

(a) For that milk received from producers and from a handler described in

§ 1079.9(c) at a plant located outside the marketing area, and 60 miles or more by the shortest hard-surfaced highway distance, as measured by the market administrator from the main post offices of Des Moines and Ottumwa, Iowa, which is classified as Class I milk without movement in bulk form to a pool distributing plant, the price specified in § 1079.50(a) shall be reduced 10 cents, and shall be reduced an additional 1.5 cents for each 10 miles or fraction thereof in excess of 75 miles from the designated post offices.

(b) For fluid milk products transferred in bulk from a pool plant to a pool distributing plant, a Class I location adjustment credit for the transferor-plant shall be determined by the market administrator for skim milk and butterfat, respectively, as follows:

(1) Multiply the pounds of skim milk remaining in Class I at the transfereeplant after the computations pursuant to § 1079.44(a)(12) by 105 percent;

(2) Subtract the pounds of skim milk in receipts of milk at the transfereeplant from producers and handlers described in § 1079.9(c);

(3) Assign any remaining pounds of skim milk in Class I at the transfereeplant to the skim milk in receipts of bulk fluid milk products from other pool plants, first to the transferor-plants at which no location adjustment applies and then in sequence beginning with the plant at which the least location adjustment applies;

(4) Compute the total amount of location adjustment credits to be assigned to transferor-plants by multiplying the pounds of skim milk assigned to each transferor-plant pursuant to paragraph (b)(3) of this section by the applicable location adjustment rate for each such plant, and add the resulting amounts;

(5) Assign the total amount of location adustment credits computed pursuant to paragraph (b)(4) of this section to those transferor-plants that transferred fluid milk products containing skim milk classified as Class I milk pursuant to § 1079.42(a), in sequence beginning with the plant at which the least location adjustment applies. Subject to the availability of such credits, the credit assigned to each plant shall be equal to the hundredweight of such Class I skim milk multiplied by the applicable location adjustment rate for such plant. If the aggregate of this computation for all plants having the same location adjustment rate exceeds the credits that are available to those plants, such credits shall be prorated to the volume of skim milk in Class I transfers received from such plants; and

(6) Class I location adjustment credit for butterfat shall be determined in accordance with the procedure outlined for skim milk in paragraph (b)(1) through (5) of this section.

(c) The Class I price applicable to other source milk shall be adjusted at the rates set forth in paragraph (a) of this section, except that the adjusted Class I price shall not be less than the Class III price.

§ 1079.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month and the Class II and Class III prices for the preceding month.

§ 1079.54 Equivalent price.

If for any reason a price or pricing constituent required by this part for computing class prices or for other purposes is not available as prescribed in this part, the market administrator shall use a price or pricing constituent determined by the Secretary to be equivalent to the price or pricing constituent that is required.

UNIFORM PRICE

§ 1079.60 Handler's value of milk for computing uniform price.

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler with respect to each of his pool plants and of each handler described in § 1079.9 (b) and (c) with respect to milk that was not received at a pool plant as follows:

(a) Multiply the pounds of milk received from a handler described in § 1079.9(c) and subtracted from each class pursuant to § 1079.44(a)(13) and the corresponding step of § 1079.44(b) and the pounds of producer milk in each class as determined pursuant to § 1079.44 by the applicable class prices and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1079.44(a)(14) and the corresponding step of § 1079.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1079.74, that are applicable at the location of the pool plant;

(c) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the pool plant or the Class II price, as the case may be, for the current month by the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1079.44(a)(9) and the corresponding step of § 1079.44(b);

(d) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1079.44(a)(7) (i) through (iv) and the corresponding step of § 1079.44(b), excluding receipts of bulk fluid cream products from an other order plant;

(e) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the transferor-plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1079.44 (a)(7) (v) and (vi) and the corresponding step of § 1079.44 (b); and

(f) Add the amount obtained from multiplying the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1079.44(a)(11) and the corresponding step of § 1079.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

§ 1079.61 Computation of uniform price.

For each month the market administrator shall compute an aggregate value from which to determine the uniform price per hundredweight for producer milk of 3.5 percent butterfat content, f.o.b. plants located within the marketing area, as follows:

(a) Combine into one total the values computed pursuant to § 1079.60 for all pool plants for which the reports prescribed in § 1079.30 for such month were made, except those in default of payments required pursuant to § 1079.71 for the preceding month;

(b) Add an amount equal to the sum of the location adjustment deductions to be made pursuant to § 1079.75;

(c) Add an amount equal to not less than one-half of the unobligated cash balance in the producer-settlement fund;

(d) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1079.60(f); and

(e) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (d) of this section. The result shall be known as the uniform price for milk received from producers.

§ 1079.62 Announcement of uniform price and butterfat differential.

The market administrator shall announce publicly on or before:

(a) The fifth day after the end of each month the butterfat differential for such month; and

(b) The 10th day after the end of each month the uniform price for such month.

PAYMENTS FOR MILK

§ 1079.70 Producer-settlement fund.

The market administrator shall maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made to such fund pursuant to §§ 1079.71, 1079.76, and 1079.77, and out of which he shall make all payments from such fund pursuant to §§ 1079.72 and 1079.77: *Provided*, That

the market administrator shall offset the payment due to a handler against payments due from such handler.

§ 1079.71 Payments to the producer-settlement fund.

(a) On or before the 12th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the amount specified in paragraph (a)(1) of this section exceeds the amount specified in paragraph (a)(2) of this section:

(1) The total value of milk of the handler for such month as determined pursuant to § 1079.60.

(2) The sum of:

(i) The value of milk received by such handler from producers and handlers described in § 1079.9(c) at the uniform price, as adjusted pursuant to § 1079.75, less in the case of a handler described in § 1079.9(c) the amount due from other handlers pursuant to § 1079.73 before adjustment for butterfat content; and

(ii) The value at the uniform price applicable at the location of the plant from which received of other source milk for which a value is computed pursuant to § 1079.60(f).

(b) On or before the 25th day after the end of the month each person who operated an other order plant that was regulated during such month under an order providing for individual-handler pooling shall pay to the market administrator an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk in route disposition from such plant in the marketing area which was allocated to Class I at such plant. It there is such route disposition from such plant in marketing areas regulated by two or more market-wide pool orders, the reconstituted skim milk allocated to Class I shall be prorated to each order according to such route disposition in each marketing area; and

(2) Compute the value of the reconstituted skim milk assigned in paragraph (b)(1) of this section to route disposition in this marketing area by multiplying the quantity of such skim milk by the difference between the Class I price under this part that is applicable at the location of the other order plant (but not to be less than the Class III price), and the Class III price.

§ 1079.72 Payments from the producer-settlement fund.

On or before the 13th day after the end of each month the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1079.71(a)(2) exceeds the amount computed pursuant to § 1079.71(a)(1): *Provided*, That if the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the necessary funds are available. A handler who has not received the balance of such payments from the market administrator shall not be considered in violation of § 1079.73 if he reduces his payments to producers by not more than the amount of the reduction in payment from the producer-settlement fund.

§ 1079.73 Payments to producers and to cooperative associations.

(a) Each handler shall pay each producer for producer milk for which payment is not made to a cooperative association pursuant to paragraph (b) and (d) of this section, as follows:

(1) On or before the last day of each month, for producer milk received during the first 15 days of the month, at not less than the Class III price for the preceding month; and

(2) On or before the 15th day after the end of each month, for producer milk received during such month, an amount computed at not less than the uniform price pursuant to § 1079.61 adjusted pursuant to §§ 1079.74, 1079.75, and 1079.86, and less the payment made pursuant to paragraph (a)(1) of this section.

(b) Each handler shall make payment to a cooperative association for producer milk which it caused to be delivered to such handler, which association the market administrator determines is authorized by such producers to collect payment for their milk and which has so requested the handler in writing, an amount equal to the sum of the individual payments otherwise payable for such producer milk, as follows:

(1) On or before the 26th day of each month for producer milk received during the first 15 days of the month; and

(2) On or before the 13th day after the end of each month for milk received during such month.

(c) In making the payments for producer milk pursuant to this section, each handler shall furnish each producer or cooperative association from whom he has received milk with a supporting statement in such form that it may be retained by the recipient, which shall show:

(1) The month and identity of the handler and of the producer;

(2) The daily and total pounds and the average butterfat content of producer milk;

(3) The minimum rate or rates at which payment to the producer is required pursuant to the order;

(4) The rate which is used in making the payment, if such rate is other than the applicable minimum rate;

(5) The amount or the rate per hundredweight and nature of each deduction claimed by the handler; and

(6) The net amount of payment to such producer or cooperative association.

(d) Each handler in his capacity as the operator of a pool plant, who receives milk from a handler described in § 1079.9(c), including the milk of producers who are not members of such association, and who the market administrator determines have authorized such cooperative association to collect payment for their milk, shall pay such cooperative for such milk 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 for milk received during such month, an amount computed at not less than the uniform price as adjusted pursuant to §§ 1079.74 and 1079.75, and less the payment made pursuant to paragraph (d)(1) of this section.

§ 1079.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.115 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month.

§ 1079.75 Location adjustments for producers and on nonpool milk.

(a) The uniform price for producer milk pursuant to § 1079.61 received at a pool plant or diverted from a pool plant shall be reduced according to the location of the plant of actual receipt at the rates set forth in § 1079.52.

(b) For purposes of computations pursuant to §§ 1079.71 and 1079.72 the uniform price shall be adjusted at the rates set forth in § 1079.52 applicable at the location of the nonpool plant from which the milk was received, except that the adjusted uniform price shall not be less than the Class III price.

§ 1079.76 Payments by handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay on or before the 25th day after the end of the month to the market administrator for the producer-settlement fund the amount computed pursuant to paragraph (a) of this section. If the handler submits pursuant to §§ 1079.30(b) and 1079.31(b) the information necessary for making the computations, such handler may elect to pay in lieu of such payment the amount computed pursuant to paragraph (b) of this section:

(a) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the pounds of route disposition of fluid milk products in the marketing area from the partially regulated distributing plant;

(2) Subtract the pounds of fluid milk products received at the partially regulated distributing plant:

(i) As Class I milk from pool plants and other order plants, except that subtracted under a similar provision of another Federal milk order; and

(ii) From another nonpool plant that is not an other order plant to the extent that an equivalent amount of fluid milk products disposed of to such nonpool plant by handlers fully regulated under any Federal milk order is classified and

priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract the pounds of reconstituted skim milk in route disposition of fluid milk products in the marketing area from the partially regulated distributing plant;

(4) Multiply the remaining pounds by the difference between the Class I price and the uniform price, both prices to be applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price); and

(5) Add the amount obtained from multiplying the pounds of reconstituted skim milk specified in paragraph (a)(3) of this section by the difference between the Class I price applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price) and the Class III price.

(b) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the value that would have been computed pursuant to § 1079.60 for the partially regulated distributing plant if the plant had been a pool plant, subject to the following modifications:

(i) Fluid milk products and bulk fluid cream products received at the partially regulated distributing plant from a pool plant or an other order plant shall be allocated at the partially regulated distributing plant to the same class in which such products were classified at the fully regulated plant;

(ii) Fluid milk products and bulk fluid cream products transferred from the partially regulated distributing plant to a pool plant or an other order plant shall be classified at the partially regulated distributing plant in the class to which allocated at the fully regulated plant. Such transfers shall be allocated to the extent possible to those receipts at the partially regulated distributing plant from pool plants and other order plants that are classified in the corresponding class pursuant to paragraph (b)(1)(i) of this section. Any such transfers remaining after the above allocation which are classified in Class I and for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1079.60 shall be priced at the uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee-plant, with such uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

(iii) If the operator of the partially regulated distributing plant so requests, the value of milk determined pursuant to § 1079.60 for such handler shall include, in lieu of the value of other source milk specified in § 1079.60(f) less the value of such other source milk specified in § 1079.71(a)(2)(ii), a value of milk determined pursuant to § 1079.60 for each nonpool plant that is not an other order plant which serves as a supply plant for such partially regulated distributing plant by making shipments to the partially regulated distributing plant during the month equivalent to the requirements of § 1079.7(b) subject to the following conditions:

(*a*) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1079.30(b) and 1079.31(b) similar reports for each such nonpool supply plant;

(*b*) The operator of such nonpool supply plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for verification purposes; and

(*c*) The value of milk determined pursuant to § 1079.60 for such nonpool supply plant shall be determined in the same manner prescribed for computing the obligation of such partially regulated distributing plant; and

(2) From the partially regulated distributing plant's value of milk computed pursuant to paragraph (b)(1) of this section, subtract:

(i) The gross payments by the operator of such partially regulated distributing plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1079.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated;

(ii) If paragraph (b)(1)(iii) of this section applies, the gross payments by the operator of such nonpool supply plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1079.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated ;and

(iii) The payments by the operator of the partially regulated distributing plant to the producer-settlement fund of another order under which such plant is also a partially regulated distributing plant and like payments by the operator of the nonpool supply plant if paragraph (b)(1)(iii) of this section applies.

§ 1079.77 Adjustment of accounts.

Whenever verification by the market administrator of reports or payments of any handler discloses errors in payments to or from the producer-settlement fund pursuant to §§ 1079.71 and 1079.72, the market administrator shall promptly bill such handler for any unpaid amounts and such handler shall, within 15 days of such billing, make payments to the market administrator of the amount so billed. Whenever verification discloses that payment is due from the market administrator to any handler, the market administrator shall, within 15 days, make such payment to such handler. Whenever verification by the market administrator of the payment by a handler to any producer or to a cooperative association discloses payment of an amount less than is required by § 1079.73 the handler shall make up such payment to the producer or cooperative association not later than the time of making payment next following such disclosure.

Administrative Assessment and Marketing Service Deduction

§ 1079.85 Assessment for order administration.

As his pro rata share of the expense of administration of the order, each handler (excluding a handler described in § 1079.9(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 and milk received from a handler described in § 1079.9(c);

(b) Other source milk allocated to Class I pursuant to § 1079.44(a) (7) and (11) and the corresponding steps of § 1079.44(b), except such other source milk that is excluded from the computations pursuant to § 1079.60 (d) and (f); and

(c) Class I milk disposed of from a partially regulated distributing plant on routes in the marketing area that exceeds the skim milk and butterfat subtracted pursuant to § 1079.76(a)(2).

§ 1079.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler in making payments to each producer pursuant to § 1079.73 shall deduct 5 cents per hundredweight or such lesser amount as the Secretary may prescribe with respect to producer milk received by such handler (except such handler's own farm production) during the month, and shall pay such deductions to the market administrator not later than the 15th day after the end of the month. Such money shall be used by the market administrator to verify or establish weights, samples, and tests of producer milk and to provide producers with market information. Such services shall be performed in whole or in part by the market administrator or by an agent engaged by and responsible to him.

(b) In the case of producers for whom a cooperative association is performing, as determined by the Secretary, the services set forth in paragraph (a) of this section, each handler shall make, in lieu of the deductions specified in paragraph (a) of this section, such deductions as are authorized by such producers and, on or before the 15th day after the end of each month, pay over such deductions to the association rendering such services.

(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.74–10172 Filed 5–2–74;8:45 am]

Title 18—Conservation of Power and Water Resources

CHAPTER I—FEDERAL POWER COMMISSION

SUBCHAPTER A—GENERAL RULES

[Docket No. RM74-21; Order No. 508]

PART 2—GENERAL POLICY AND INTERPRETATIONS

Recreational Development at Licensed Projects

Section 2.7 of the general rules details those responsibilities which the Commission expects a licensee to assume in the development of recreational facilities at licensed projects. One of the provisions of this Statement of General Policy is to provide adequate public access to such project facilities and waters.

Adequate public access considerations should include needs of those persons confined to wheelchairs or in need of handrails or walking aids. Steps, narrow door passages, lack of handrails, and curbs often preclude the use of recreational facilities by handicapped individuals. Many of these obstacles can be overcome through planning.

The United States Public Health Service estimates that one American out of every twelve has some degree of ambulatory limitation. Concern for the welfare of the physically handicapped and provision of appropriate facilities are not only humanitarian in nature but also lead to the increased utilization of recreational facilities by handicapped persons and their families.

Federal legislation (Pub. L. 90-480) recognizes problems of the physically handicapped and requires that the design and construction of certain buildings financed by Federal funds be such that the buildings are accessible to the physically handicapped. Legislation also has been enacted by most states to include similar provisions in publicly financed buildings. A few states require consideration for the physically handicapped in publicly used, but privately owned, buildings. Several Federal regulatory agencies have published material suggesting features that can be incorporated in the modifications or construction of new building facilities and surrounding areas to assist the physically handicapped. Some licensees already give consideration to the physically handicapped in the design of recreational facilities at their projects.

The Commission finds:

(1) In order to insure that planning of recreational facilities at all licensed projects includes consideration of features to facilitate their use by the physically handicapped, it is appropriate that the Commission Statement of General Policy on recreation be amended. Consideration of the needs of physically handicapped individuals should be one of the responsibilities which the Commission expects a licensee to assume in the planning of project recreational facilities.

(2) Good cause exists to justify issuance of this order with immediate effective date.

(3) The amendment here adopted is in the public interest and necessary and appropriate for the administration of the Federal Power Act.

(4) The notice and effective date provisions of 5 U.S.C. 553 do not apply with respect to the amendment here adopted. The amendment constitutes a statement of general policy.

The Commission, acting pursuant to the provisions of the Federal Power Act, as amended, particularly sections 308 and 309 (49 Stat. 858, 859; 16 U.S.C. 825g, 825h), orders:

(A) Paragraph (b) of 18 CFR 2.7 is revised to read as follows:

§ 2.7 Recreational development at licensed projects.

* * * * *

(b) To develop suitable public recreational facilities upon project lands and waters and to make provisions for adequate public access to such project facilities and waters and to include therein consideration of the needs of physically handicapped individuals in the design and construction of such project facilities and access.

(B) The amendment adopted herein shall be effective upon issuance of this order.

(C) The Secretary shall cause prompt publication of this order to be made in the FEDERAL REGISTER.

By the Commission.

[SEAL] KENNETH F. PLUMB, *Secretary.*

[FR Doc.74-10476 Filed 5-7-74;8:45 am]

PART 159—FEES AND ANNUAL CHARGES UNDER THE NATURAL GAS ACT

CFR Correction

In the fourth line of § 159.2(a) appearing on page 78 of Title 18, Part 150 to End, revised as of April 1, 1973, the figure in parentheses "(0.0065)" is in error. As corrected, the fourth line should read "cent (0.00065) of the estimated cost of".

Title 14—Aeronautics and Space

CHAPTER I—FEDERAL AVIATION ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Docket No. 74-NE-19; Amdt. 39-1834]

PART 39—AIRWORTHINESS DIRECTIVES

Pratt & Whitney JT9D-7, -7A, and -20 Aircraft Engines

There have been instances of multiple adjacent cracked second stage turbine nozzle vanes in which the turbine vane support contacted the outer disc rim in the plane of the fir tree area resulting in turbine blade failure and disc rub. Since this condition is likely to exist or develop in other engines of the same type design, an Airworthiness Directive is being issued to require radioisotope inspection of the second stage vanes for deflection and removal of the affected engines from service if excessive deflection of the vane is discovered.

Because the affected engines have different second stage vane design configurations, several different compliance times for initial inspection are set forth in this AD, the shortest of which requires compliance within 400 hours time in service from the effective date of the AD. These compliance times for the initial inspection have been established by the agency on the basis of safety considerations and are the same as those requested by the manufacturer in the applicable service bulletin except that the shortest initial compliance time has been adjusted to reflect the time since the issuance of the service bulletin. To proceed with the issuance of a Notice in this instance could result in an extension of the initial inspection compliance time expressed in this AD. Therefore, accomplishment of the initial inspection required by this AD within the time the agency has determined is necessary makes strict compliance with the notice and public procedure provisions of the Administrative Procedure Act impracticable and this amendment becomes effective June 7, 1974. However, interested persons are invited to submit such written data, views, or arguments as they may desire regarding this AD. Communications should identify the docket number and be submitted in duplicate to the Federal Aviation Administration, Office of the Regional Counsel, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803. All communications received before the effective date will be considered by the Administrator, and the AD may be changed in the light of comments received. All comments will be available both before and after the effective date in the Rules Docket for examination by interested parties. Operators are urged to submit their comments as early as possible since it may not be possible to evaluate comments received near the effective date in sufficient time to amend the AD before it becomes effective.

The substance of this AD has been informally coordinated with the manufacturer of the engines and Air Transport Association.

In consideration of the foregoing and pursuant to the authority delegated to me by the Administrator (14 CFR 11.89), § 39.13 of Part 39 of the Federal Aviation Regulations is amended by adding the following new Airworthiness Directive:

PRATT & WHITNEY AIRCRAFT. Applies to all Pratt & Whitney Aircraft JT9D-7, JT9D-7A, and JT9D-20 turbofan engines.

Compliance required as follows unless already accomplished.

To preclude possible turbine blade or disc failures resulting from deflection of the second stage turbine nozzle guide vane inner support, perform a radioisotope inspection in accordance with paragraph 6 below per the following schedule:

1. Engines containing second stage vanes, P/N 708952. a. For vanes with less than 4000 hours total time in service or less than 4000 hours since the fuel nozzles and supports were last cleaned, as of the effective date of

this AD, inspect prior to the accumulation of 4000 hours total time, or 4000 hours since the fuel nozzles and supports were last cleaned, or 400 hours time in service after the effective date of this AD, whichever occurs later.

b. For vanes with 4000 or more hours total time in service and 4000 or more hours since the fuel nozzles and supports were last cleaned, as of the effective date of this AD, inspect within the next 400 hours time in service.

c. Repeat the above inspection every 700 hours time in service thereafter.

2. Engines containing second stage vanes, P/N 708952, that were reworked per Pratt & Whitney Service Bulletin 3946 and reidentified to P/N 728752 and operated in engines prior to rework.

a. Inspect within the next 400 hours in service after the effective date of this AD.

b. Repeat the above inspection every 700 hours time in service thereafter.

3. For engines containing new production second stage vanes 719552, 728752, 731552, 735882, 740292, 747082, 746492, and 747172, not reworked in accordance with Service Bulletin 3946 and operated prior to the incorporation of Pratt & Whitney Service Bulletin 4146.

a. For vanes with less than 5000 hours total time in service or less than 4000 hours since the fuel nozzles and supports were last cleaned, as of the effective date of this AD, inspect prior to the accumulation of 5000 hours total time, or 4000 hours since the fuel nozzles and supports were last cleaned, or 400 hours time in service after the effective date of this AD, whichever occurs later.

b. For vanes with 5000 or more hours total time in service and 4000 or more hours since the fuel nozzles and supports were last cleaned, as of the effective date of this AD, inspect within the next 400 hours time in service.

c. Repeat the above inspection every 2500 hours time in service thereafter.

4. For engines containing second stage vanes, 719552, 728752, 731552, 735882, 740292, 747082, 746492, and 747172, that have incorporated Pratt & Whitney Service Bulletin 4146 before operation.

a. For vanes with less than 5000 hours total time in service or less than 5000 hours since the fuel nozzles and supports were cleaned, as of the effective date of this AD, inspect prior to the accumulation of 5000 hours total time or 5000 hours since the fuel nozzles and supports were cleaned, or 400 hours time in service after the effective date of this AD, whichever occurs later.

b. For vanes with more than 5000 hours total time in service and 5000 or more hours since the fuel nozzles and supports were cleaned, as of the effective date of this AD, inspect within the next 400 hours time in service.

c. Repeat the above inspection every 2500 hours time in service thereafter.

5. If any radioisotope inspection mentioned above indicates a deflection which exceeds .070 inch, remove the affected engine from service prior to further flight.

6. The inspection required above are radioisotope inspections conducted as follows:

a. For JT9D-7 and JT9D-7A engines, inspect in accordance with radioisotope inspection procedures specified in the Boeing Maintenance Manual, Section 72-00-00, Paragraph E(7), Pages 680N and 680P, revision dated March 1974, for those engines, or later Federal Aviation Administration approved revision.

b. For JT9D-20 engines, inspect in accordance with radioisotope inspection procedures specified in the McDonnell-Douglas Maintenance Manual, Section 72-00-00, Paragraph 2.G., Pages 631 and 633, revision dated May 1973, for this engine, or later Federal Aviation Administration approved revision.

7. Upon submittal of substantiating data through a Federal Aviation Administration Inspector, the Chief, Engineering and Manufacturing Branch, Federal Aviation Administration, New England Region, may adjust the compliance time.

8. For cases where vanes are mixed, if ten or more vanes of any one of the above part numbered categories are installed in an engine, the most restrictive category will apply.

The manufacturer's specifications and procedures identified and described in this directive are incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to The Boeing Company, Post Office Box 3707, Seattle, Washington 98124 and McDonnell-Douglas Corporation, Douglas Aircraft Company, 3855 Lakewood Boulevard, Long Beach, California 90801. These documents may also be examined at the Office of the Regional Counsel, New England Region, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803 and at Federal Aviation Administration Headquarters, 800 Independence Avenue SW., Washington, D.C. a historical file on this AD which includes the incorporated material in full is maintained by the Federal Aviation Administration at its headquarters in Washington, D.C. and at the New England Regional Office in Burlington, Massachusetts.

NOTE: Pratt & Whitney Alert Service Bulletin 4304 pertains to this subject.

This amendment becomes effective June 7, 1974.

(Secs. 313(a), 601, 603, Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421, 1423); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)))

Issued in Burlington, Massachusetts, on April 26, 1974.

NOTE: The incorporation by reference provisions in this document was approved by the Director of the FEDERAL REGISTER on June 19, 1967.

W. E. CROSBY,
Deputy Director,
New England Region.

[FR Doc.74-10538 Filed 5-7-74;8:45 am]

[Airspace Docket No. 74-SW-9]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

Alteration of Control Zone

The purpose of this amendment to Part 71 of the Federal Aviation Regulations is to alter the Big Spring, Tex., control zone.

On March 20, 1974, a notice of proposed rulemaking was published in the FEDERAL REGISTER (39 FR 10438) stating the Federal Aviation Administration proposed to alter the Big Spring, Tex., control zone.

Interested persons were afforded an opportunity to participate in the rule making through 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 § 71.171 (39 FR 354), the Big Spring, Tex., control zone is amended to read:

BIG SPRING, TEX.

That airspace within a 5-mile radius of Webb AFB, Big Spring, Tex. (latitude 32°12'-51" N., longitude 101°31'24" W.); within a 5-mile radius of Howard County Airport, Big Spring, Tex. (latitude 32°18'05" N., longitude 101°26'20" W.); within 2 miles each side of the Big Spring VORTAC 190° radial extending from the Webb AFB 5-mile radius zone to 1 mile S of the VORTAC; within 2 miles each side of the Big Spring VORTAC 151° radial extending from the Howard County Airport 5-mile radius zone to the VORTAC; within 3 miles each side of the Webb VORTAC 007° radial extending from the Webb AFB 5-mile radius zone to 8 miles N of the VORTAC; and within 3 miles each side of the Webb VORTAC 177° radial extending from the Webb AFB 5-mile radius zone to 8 miles S of the VORTAC. This control zone will be effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airman's Information Manual.

(Sec. 307(a), Federal Aviation Act of 1958 (49 U.S.C. 1348); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)))

Issued in Fort Worth, Tex., on April 29, 1974.

ALBERT H. THURBURN,
Acting Director,
Southwest Region.

[FR Doc.74-10539 Filed 5-7-74;8:45 am]

[Airspace Docket No. 74-WA-10]

PART 73—SPECIAL USE AIRSPACE

Alteration of Restricted Areas

The purpose of this amendment to Part 73 of the Federal Aviation Regulations is to change the using agency for Restricted Areas R-5701 Boardman, Oreg., R-5706 Boardman, Oreg., R-6701 Admiralty Inlet, Wash., R-6705 Strait of Juan De Fuca, Wash., R-6707 Queets, Wash., and R-6713 Whidbey Island, Wash.

The change will correct the identity of the military organization for whom the restricted areas are designated.

Since designation of a different using agency is a minor amendment upon which the public is not particularly interested, notice and public procedure thereon are unnecessary. However, as it is essential that the correct using agency of the restricted areas be identified, good cause exists for making this amendment effective immediately.

In consideration of the foregoing, Part 73 of the Federal Aviation Regulations is amended, effective May 8, 1974, as hereinafter set forth.

1. In § 73.57 (39 FR 685):

a. The Using agency for R-5701 Boardman, Oreg., is changed to read as follows:

Using agency. Commander, Medium Attack Tactical Electronic Warfare Wing, NAS Whidbey Island, Wash.

b. The Using agency for R–5706 Boardman, Oreg., is changed to read as follows:

Using agency. Commander, Medium Attack Tactical Electronic Warfare Wing, NAS Whidbey Island, Wash.

2. In § 73.67 (39 FR 692):

a. The Using agency for R–6701 Admiralty Inlet, Wash., is changed to read as follows:

Using agency. Commander, Medium Attack Tactical Electronic Warfare Wing, NAS Whidbey Island, Wash.

b. The Using agency for R–6705 Strait of Juan De Fuca, Wash., is changed to read as follows:

Using agency. Commander, Medium Attack Tactical Electronic Warfare Wing, NAS Whidbey Island, Wash.

c. The Using agency for R–6707 Queets, Wash., is changed to read as follows:

Using agency. Commander, Medium Attack Tactical Electronic Warfare Wing, NAS Whidbey Island, Wash.

d. The Using agency for R–6713 Whidbey Island, Wash., is changed to read as follows:

Using agency. Commander, Medium Attack Tactical Electronic Warfare Wing, NAS Whidbey Island, Wash.

(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 Washington, D.C., on April 29, 1974.

GORDON E. KEWER,
Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc.74–10540 Filed 5–7–74;8:45 am]

[Airspace Docket No. 74–WA–8]

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

Alteration of RNAV Routes

The purpose of this amendment to Part 75 of the Federal Aviation Regulations is to alter the description of three RNAV routes in the Portland, Oregon Area, by renaming and relocating the SHERO Waypoint to the site of Newberg, Oregon, VORTAC. The SHERO Waypoint is less than one-half mile from the Newberg VORTAC, and when the controller attempts to identify a radar target over Newberg with the radar trackball, the computer at times will process the information as proceeding via SHERO, thereby transmitting incorrect information to other sectors. Additionally, the SHERO Waypoint and the Newberg VORTAC are so close that they should be considered as the same location.

Since this amendment does not require designating additional controlled airspace, but merely substitutes names in the route description, it is a minor editorial change on which the public would have no particular reason to comment. Therefore notice and public procedure are unnecessary.

However, since sufficient time must be allowed to make appropriate changes on aeronautical charts, this amendment will become effective more than 30 days after publication.

In consideration of the foregoing, Part 75 of the Federal Aviation Regulations is amended effective 0901 G.m.t., July 18, 1974, as hereinafter set forth.

§ 75.400 (39 FR 718, 38 FR 24204) is amended as follows:

1. In J–902R: "SHERO 45°21'05"N. 122°59'00"W. Portland, Oreg." is deleted and "Newberg, Oreg. 45°21'12"N. 122° 58'37"W. Newberg, Oreg." is substituted therefor.

2. In J–911R: "SHERO 45°21'05"N. 122°59'00"W. Portland, Oreg." is deleted and "Newberg, Oreg. 45°21'12"N. 122° 58'37"W. Newberg, Oreg." is substituted therefor.

3. In J–913R: "SHERO 45°21'05"N. 122°59'00"W. Portland, Oreg." is deleted and "Newberg, Oreg. 45°21'12"N. 122° 58'37"W. Newberg, Oreg." is substituted therefor.

(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 Washington, D.C., on May 1, 1974.

GORDEN E. KEWER,
Acting Chief, Airspace and Traffic Rules Division.

[FR Doc.74–10541 Filed 5–7–74;8:45 am]

[Airspace Docket No. 74–WA–15]

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

Alteration of Jet Route

The purpose of this amendment to Part 75 of the Federal Aviation Regulations is to realign J–15 between Roswell, N. Mex., and Albuquerque, N. Mex., so that the existing bend in the route will be moved to the point of intersection of J–15 with J–74. This will be accomplished by extending the presently used Roswell radial, and adjusting the Albuquerque radial two degrees eastward.

This slight change will eliminate the requirement to use the Albuquerque VORTAC by jet aircraft en route from Socorro, N. Mex., to Roswell.

Because this action merely realigns a segment of J–15 by two degrees, it is a minor matter on which the public would have no particular desire to comment. Therefore, notice and public procedure thereon are unnecessary. In order to provide sufficient time for changes to be depicted on appropriate charts, this amendment will be made effective on July 18, 1974.

In consideration of the foregoing, Part 75 of the Federal Aviation Regulations is amended, effective 0901 G.m.t., July 18, 1974, as hereinafter set forth.

§ 75.100 (39 FR 699) is amended as follows: In Jet Route No. 15 "INT of the Roswell 319° and the Albuquerque, N. Mex., 128° radials;" is deleted and "INT of the Roswell 319° and the Albuquerque, N. Mex., 126° radials;" is substituted therefor.

(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 Washington, D.C., on May 1, 1974.

GORDON E. KEWER,
Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc.74–10542 Filed 5–7–74;8:45 am]

[Docket No. 13694; Amdt. No. 915]

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

Recent Changes and Additions

This amendment to Part 97 of the Federal Aviation regulations incorporates by reference therein changes and additions to the Standard Instrument Approach Procedures (SIAPs) that were recently adopted by the Administrator to promote safety at the airports concerned.

The complete SIAPs for the changes and additions covered by this amendment are described in FAA Forms 3139, 8260–3, 8260–4, or 8260–5 and made a part of the public rulemaking dockets of the FAA in accordance with the procedures set forth in Amendment No. 97–696 (35 FR 5609).

SIAPs are available for examination at the Rules Docket and at the National Flight Data Center, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591. Copies of SIAPs adopted in a particular region are also available for examination at the headquarters of that region. Individual copies of SIAPs may be purchased from the FAA Public Document Inspection Facility, HQ–405, 800 Independence Avenue, SW., Washington, D.C. 20591 or from the applicable FAA regional office in accordance with the feed schedule prescribed in 49 CFR 7.85. This fee is payable in advance and may be paid by check, draft or postal money order payable to the Treasurer of the United States. A weekly transmittal of all SIAP changes and additions may be obtained by subscription at an annual rate of $150.00 per annum from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. Additional copies mailed to the same address may be ordered for $30.00 each.

Since a situation exists that requires immediate adoption of this amendment, I find that further notice and public procedure hereon is impracticable and good cause exists for making it effective in less than 30 days.

In consideration of the foregoing, Part 97 of the Federal Aviation regulations is amended as follows, effective on the dates specified:

1. Section 97.23 is amended by originating, amending, or canceling the following VOR–VOR/DME SIAPs, effective June 20, 1974:

Chino, Calif.—Chino Arpt., VOR-A, Orig.
Chino, Calif.—Chino Arpt., VOR-1, Amdt. 1, canceled.
Fayetteville, Ark.—Drake Field, VOR-A, Amdt. 14.
Flint, Mich.—Bishop Arpt., VOR Rwy 9, Amdt. 13.
Flint, Mich.—Bishop Arpt., VOR Rwy 18, Amdt. 7.
Flint, Mich.—Bishop Arpt., VOR Rwy 27, Amdt. 10.
Flint, Mich.—Bishop Arpt., VOR Rwy 36, Amdt. 3.
Hobbs, N.M.—Lea County (Hobbs) Arpt., VOR/DME Rwy 21, Orig.
Muncie, Ind.—Delaware County-Johnson Field, VOR Rwy 14, Amdt. 7.
Muncie, Ind.—Delaware County-Johnson Field, VOR Rwy 20, Amdt. 4.
Muncie, Ind.—Delaware County-Johnson Field, VOR Rwy 32, Amdt. 4.
Painesville, Ohio—Concord Airpark, VOR-A, Amdt. 4.
Tucson, Ariz.—Tucson Int'l. Arpt., VOR-A, Amdt. 4.
Tucson, Ariz.—Tucson Int'l. Arpt., VOR/DME-A, Amdt. 2, canceled.
Tucson, Ariz.—Tucson Int'l. Arpt., VOR/DME-B, Orig.

* * * effective April 29, 1974:

Orlando, Fla.—Herndon Arpt., VOR Rwy 13, Amdt. 8.
Orlando, Fla.—Herndon Arpt., VOR Rwy 31, Amdt. 8.
Orlando, Fla.—McCoy AFB, VOR/DME Rwy 36R, Amdt. 2.

2. Section 97.25 is amended by originating, amending, or canceling the following SDF-LOC-LDA SIAPs, effective June 20, 1974:

Fayetteville, Ark.—Drake Field, LOC Rwy 16, Amdt. 3.
Flint, Mich.—Bishop Arpt., LOC (BC) Rwy 27, Amdt. 7.
Tucson, Ariz.—Tucson Int'l. Arpt., LOC Rwy 11L, Amdt. 4.
Tucson, Ariz.—Tucson Int'l. Arpt., LOC (BC) Rwy 29R, Amdt. 4.

3. Section 97.27 is amended by originating, amending, or canceling the following NDB/ADF SIAPs, effective July 18, 1974:

Statesville, N.C.—Statesville Municipal Arpt., NDB Rwy 20, Amdt. 2.

* * * effective June 20, 1974:

Amarillo, Tex.—Tradewind Arpt., NDB-A, Amdt. 9.
Flint, Mich.—Bishop Arpt., NDB Rwy 9, Amdt. 15.
San Angelo, Tex.—Mathis Field, NDB Rwy 3, Amdt. 9.
Tucson, Ariz.—Tucson Int'l. Arpt., NDB-A, Amdt. 3, canceled.
Tucson, Ariz.—Tucson Int'l. Arpt., NDB-C, Orig.

4. Section 97.29 is amended by originating, amending, or canceling the following ILS SIAPs, effective June 20, 1974:

Flint, Mich.—Bishop Arpt., ILS Rwy 9, Amdt. 8.
San Angelo, Tex.—Mathis Field, ILS Rwy 3, Amdt. 12.
Tucson, Ariz.—Tucson Int'l. Arpt., ILS Rwy 11L, Amdt. 3.

5. Section 97.33 is amended by originating, amending, or canceling the following RNAV SIAPs, effective June 20, 1974:

Amarillo, Tex.—Tradewind Arpt., RNAV Rwy 35, Amdt. 4.

Correction. In Docket No. 13669, Amendment 914, to Part 97 of the Federal Aviation Regulations, published in the FEDERAL REGISTER dated May 12, 1974, under § 97.23 effective June 13, 1974—Change effective date of Eugene, Ore.—Mahlon-Sweet Field, VORTAC Rwy 3, Original to June 20, 1974.

(Secs. 307, 313, 601, 1110, Federal Aviation Act of 1948; (49 U.S.C. 1438, 1354, 1421, 1510); sec. 6(c) Department of Transportation Act (49 U.S.C. 1655(c) 5 U.S.C. 552(a)(1)))

Issued in Washington, D.C., on May 2, 1974.

NOTE.—Incorporation by reference provisions in §§ 97.10 and 97.20 approved by the Director of the FEDERAL REGISTER on May 12, 1969, (35 FR 5610).

JAMES M. VINES,
Chief,
Aircraft Programs Division.

[FR Doc.74-10552 Filed 5-7-74;8:45 am]

CHAPTER II—CIVIL AERONAUTICS BOARD

SUBCHAPTER A—ECONOMIC REGULATIONS

[Regulation ER-846; Amdt. 22]

PART 298—CLASSIFICATION AND EXEMPTION OF AIR TAXI OPERATORS

Definition of Large Aircraft

Adopted by the Civil Aeronautics Board at its office in Washington, D.C.

By notice of proposed rulemaking EDR-255,[1] the Board proposed to amend Part 298 of the Economic Regulations to include within the definition of "large aircraft" all models of the Convair 240, 340 and 440; Martin 202 and 404; F-27 and FH-227; and Hawker Siddeley 748, as well as any other aircraft with a maximum zero fuel weight greater than 35,000 pounds. The amendment was designed to clarify the Board's intention in adopting the 30-seat/7500-pound payload limitation on air taxi aircraft in the Part 298 Weight Limitation Investigation, Orders 72-7-61 and 72-9-62.

Comments in response to the notice were filed by AAT Airlines, the Alaska Transportation Commission, American Cyanamid Company, Atlantic Aviation Corporation, Christler Flying Service, Executive Air Fleet, Executive Air Lines, Executive Air Services, Fokker-VFW, General Aviation Manufacturers Association, Golden West Airlines, Hawker Siddeley Aviation, National Air Transportation Conferences (NATC), Pacific Coast Airlines, Priority Air Dispatch, Royal Airlines, Southern Airways, Swift Air Lines, and Viking International Air Freight.

Christler Flying Service and Southern Airways support the proposed amendment, while all other respondents object to the new rule in whole or in part.

Upon consideration of the matters presented, we have decided to adopt the rule as proposed. Accordingly, the tentative findings made in EDR-255 are incorporated herein and made final.[2]

At the outset, certain general observations are in order. Some of the respondents seek, in essence, a reconsideration of the Board's determinations in the Part 298 Investigation. Others disregard those determinations and simply argue that, as a matter of policy, the Board should permit air taxis to operate large aircraft whose operating weights are artificially altered to meet the 7,500-pound payload standard. According to this view, the exclusion of these airplanes would severely limit the current aircraft types (with a takeoff weight over 12,500 pounds) that could qualify under the new 30-seat/7500-pound payload test and, as a result, would largely negate the liberalizing effects of the Part 298 Investigation.

At the heart of this contention is a mistaken notion of our purpose in EDR-255. Our action was not designed to reexamine the substantive bases of the Part 298 decision which, after all, had been reached only a year earlier after extensive hearings. Instead, the proposed amendment was offered to clarify the Board's intention in the Part 298 case by embodying within the rule itself limitations which were expressed or clearly implicit in the Opinions which accompanied the new regulation. The issue before us is therefore not whether the use of Convair 440 or similar aircraft should now be permitted under the general air taxi exemption, but whether the Part 298 decision contemplated their approval.

Proceeding on that basis, it is necessary to recall that our underlying aim in the Part 298 proceeding was to draw the line between certificated and exempted air services in a manner that would serve the needs of air taxis and small community traffic, without impinging on the basic certificated structure of air transportation. To that end, we decided not to permit exempted carriers—as a class—to use large piston or turboprop air-

[1] In Docket No. 26021, 38 FR 29480 (1973).

[2] Fokker-VFW, designer of the F.27, claims the right to a hearing on the general ground that the Board, by excluding specific aircraft from the Part 298 exemption, is taking "highly particularistic" action involving specific parties and that, as a result, standard rulemaking procedures are not sufficient to satisfy due process. In the first place, we disagree with Fokker's characterization of our action. The proposed rule is aimed not merely at a specific aircraft but at an entire category of aircraft: large piston and turboprop airplanes normally capable of carrying payloads greater than 7500 pounds but whose payloads can be reduced through artificial increases in their operating weights. While the "border line" aircraft of this type are actually named in the rule for purposes of clarity, the regulation's focus remains general and its basic purpose is to interpret the 7500 pound payload standard for air taxi aircraft adopted in the Part 298 Investigation. In any event, the Board's decision to exclude the F.27 was expressly made, after extensive hearings, in the Part 298 case in which Fokker participated as a party. (See Order 72-9-62, p. 3) Fokker has therefore already been afforded the hearing it now seeks.

planes, which still form a significant proportion of local service carriers' fleets. In excluding such aircraft, we were concerned not only with the enforcement problems that might arise if we left it to the individual air taxi operator to limit its actual payloads on these large airplanes to 7500 pounds. Rather, we expected the new air taxi weight standard to leave local service airlines with the advantage of "more spacious cabin facilities, even on their smaller turboprop aircraft," [3] and relied, in part, on this advantage in concluding that the new rule would not impinge on the certificated system.

Our Opinion and Order on Reconsideration, Order 72–9–62, amplified these views and noted expressly that the new standard "did not mean to qualify * * * such aircraft as the Convair 440, Martin 202 or 404, or F–27, all of which are capable of carrying payloads in excess of 7500 pounds, but whose payloads * * * can be reduced artificially—through the use of unnecessary ballast, for example."

The comments in opposition to our proposal to disqualify these aircraft, plus the Convair 240 and 340, FH–227 and Hawker Siddeley 748, do not relate their arguments to these Board determinations in the Part 298 Investigation. They either disregard those determinations or seek to evade them by a narrow interpretation of the Board's earlier position that squares neither with the literal language of the Board's Opinions nor with their spirit. For example, several respondents stress that their aircraft have no unnecessary ballast, as if that was the only artificial change in an airplane's operating weight we were concerned about in foreclosing the use of large turboprops such as the Convair 440. In the first place, Order 72–9–62 specified that extra ballast was being cited only as an example. Moreover, from the point of view of the Board's larger purpose of restricting the competitive impact of air taxis by maintaining the certificated airlines, advantage in operating aircraft with more cabin space, it obviously matters little whether air taxis are allowed to use large aircraft with empty weights increased (and payloads thereby reduced) by unnecessary ballast, on the one hand, or by the installation of unusually heavy seats, or a bar or lounge, on the other.

Similarly, the objections of some respondents to the exclusion of the Convair 240 and 340 or the Hawker Siddeley 748 rest implicitly on the fact that these were not expressly listed in Order 72–9–62 as aircraft types on this score. Under the air taxi exemption. Our list was obviously not intended to be all-inclusive; and, none of the objectors has disputed our statement (in EDR–255) that these unlisted airplanes belong in the same category as the disqualified aircraft that were named by way of example. It is quite clear, for instance, that air taxi services with the Convair 240 or Hawker Siddeley 748 would be as much of a competitive threat to the certificated network as would operations with the Convair 440 or Martin 202—and, indeed, no one has attempted to distinguish between these aircraft types on this score. Under the circumstances, there is no basis for applying a different standard to the Convair 240 and 340, FH–227 and Hawker Siddeley 748 than to the Convair 440 and similar aircraft whose exclusion from the general air taxi exemption was made explicit in our Opinion and Order on Reconsideration.

We are aware that this conclusion limits the current aircraft newly available to air taxi operators under the more liberal 7500-pound payload weight rule. However, the suggestion that this result is at odds with the Board's intention in the Part 298 proceeding is inaccurate. At that time, the Board recognized that there were only a few existing aircraft types in the 20–30-seat/7500-pound payload category that could be used by air taxis.[4] However, instead of encouraging air taxis to operate large aircraft artificially modified to meet the 7500-pound test, the Board emphasized that its primary goal in relaxing the prior weight standard was to stimulate the manufacture of new airplanes designed for third-level service.

In this connection, additional remarks are in order in response to certain claims made on behalf of one series of the Hawker Siddeley 748—the 2C or "Commuter" model. While Hawker Siddeley apparently acknowledges that the standard versions of its 748 do not qualify under the new Part 298 weight limits, it claims that the 2C series was developed especially for the U.S. commuter market and responds to the challenge issued by the Board for the manufacture of a modern commuter aircraft with 30 or fewer passenger seats and a maximum payload of 7500 pounds. We cannot agree. The Hawker Siddeley 748 2C is virtually identical to the 2A model, a 40–58-passenger aircraft with a payload of nearly 12,000 pounds. The two models have similar avionic systems, interior and exterior dimensions, empty weights, and maximum takeoff and landing weights. The most significant difference between them (aside from the number of passenger seats) is a relatively minor structural modification in the 2C which has resulted in its lower maximum zero fuel weight of 34,500 pounds. However, Hawker Siddeley's exhibit A indicates that a simple low-cost program is available to bring the zero fuel weight up to 38,500 pounds—the same as the 748 2A's weight. On the whole, the 748 2C hardly represents the sort of new commuter airplane the Board was attempting to encourage.[5] Moreover, evaluated by the same standards we have applied to other large aircraft, the 748 2C would be capable of carrying payloads in excess of 7500 pounds if not for certain artificial alterations in its cabin design—including the installation of a bar and lounge—which clearly do not detract from its competitiveness vis-a-vis turboprop aircraft used by certificated airlines.[6] Therefore, the same grounds we cited earlier for precluding the use of the Convair 440 and similar airplanes under the broad air taxi exemption apply equally to the Hawker Siddeley 748 2C.

Next, we turn to comments opposing another feature of our proposed rule: the upper limit of 35,000 pounds zero fuel weight applicable to all Part 298 aircraft. NATC claims that in imposing this weight limit the Board would be moving away from its original concept of replacing the previous rigid gross takeoff weight standard with a more flexible seating/payload capacity rule. In fact, the additional 35,000-pound zero fuel weight test is consistent with—indeed, is meant to help effectuate—our original purposes in the Part 298 proceeding. To begin with, the 30-seat/7500-pound payload limitation will continue to be the basic standard for air taxi aircraft. The further limit on the overall size of these aircraft embodied in the 35,000-pound zero fuel weight is merely intended to minimize misuse of the payload test in the manner discussed earlier (i.e., by the operation of large aircraft with empty weights artificially increased to "qualify" within the payload limitation). At the same time, as we found EDR–255, the 35,000-pound upper limit leaves aircraft manufacturers with ample flexibility to develop a modern air taxi/commuter airplane with all the comfort features we intended to make available to small community traffic through adoption of the 30-seat/7500-pound payload standard.[7]

While we find no merit in the broad attack on the 35,000-pound upper limit, a more serious objection to this aspect of the proposed rule is that it will disqualify the Grumman Gulfstream II. The Gulfstream II is essentially an executive jet transport which, despite its heavy zero fuel weight of 38,000–42,000 pounds, has always had a capacity of about 19 passengers and a maximum payload well below 7,500 pounds. However, while we agree that because of the Gulfstream II's special characteristics, its use by exempted carriers would not normally pose a serious diversionary threat to the certificated system, it does not follow that an exception should be carved out of the proposed regulation for the sole purpose of authorizing the operation of the air-

[3] Order 72–7–61, p. 30.

[4] Order 72–7–61, pp. 12, 13.

[5] We do not mean to suggest that modern commuter aircraft must be wholly new—as opposed to developed or modified versions of older aircraft. However, when the modification is as minor as that involved here, the claim that the 748 2C is a new airplane expressly designed to meet the needs of commuter markets is unrealistic.

[6] In fact, it is possible that at least some 748 2C aircraft could operate at payloads over 7500 pounds even as now configurated. While Hawker Siddeley lists the airplane's "typical" maximum payload as 7500 pounds, a greater payload might be carried on flights where no food is served or some other operating weight element is reduced.

[7] While several respondents suggest, without evidentiary support, that the 35,000-pound maximum may be too restrictive, it should be recalled that it will permit the operation of aircraft at least three times as heavy as those operated under the old 12,500-pound takeoff weight test.

plane under the class exemption of Part 298. Only a handful of Gulfstream II aircraft are now being used by air taxis—none by commuter carriers.[8] Also, the record of the Part 298 case and the responses to EDR–255 indicate no widespread interest in the airplane among air taxis, in general, or commuters, in particular. We conclude, therefore, that individual exemption procedures are a more appropriate method for dealing with the modest demand for the Gulfstream II within the air taxi industry. The Board has in the past recognized the special characteristics of the Gulfstream II in approving its use by individual exemption[9] there is, thus, no reason to assume that an individual exemption requirement will (under normal circumstances) prove a burdensome obstacle in the future.

Finally, several respondents complain that the proposed rule is unfair because it would penalize them for having acquired aircraft, or contracted to do so, on the basis of a good-faith (even if erroneous) interpretation of the Part 298 payload standard. They therefore urge that the proposed rule should have only prospective effect and should not bar operations with certain large turboprops acquired before its effective date. As noted earlier, the proposed regulation is primarily interpretive in nature rather than a substantive change in a prior rule. The extent to which its adoption may nevertheless have an unfair and burdensome impact on any air taxi operator can only be determined by an examination of the facts on a case-by-case basis. The Board will be receptive to applications for individual exemptions which include an actual showing that the applicant acted reasonably and in good faith in acquiring aircraft now expressly disqualified, and that it would be unduly burdened by enforcement of the regulation.

In consideration of the foregoing, the Civil Aeronautics Board hereby amends Part 298 of the Economic Regulations (14 CFR Part 298) effective May 8, 1974, as follows:

Amend the definition of "large aircraft" in § 298.2 to read as follows:

§ 298.2 Definitions.

* * * * *

"Large aircraft" means any aircraft having a maximum passenger capacity of more than 30 seats or a maximum payload capacity of more than 7,500 pounds; except that in connection with operations conducted within the State of Alaska or Hawaii, large aircraft shall mean an aircraft whose maximum certificated takeoff weight is more than 12,500 pounds: *Provided, however,* That, for the purposes of this part, large aircraft shall include all models of the Convair 240, 340 and 440; Martin 202 and 404; F–27 and FH–227; and Hawker Siddeley 748; and shall also include any other aircraft with a maximum zero fuel weight in excess of 35,000 pounds.

* * * * *

(Secs. 204(a), 401, 416(b), Federal Aviation Act of 1958, as amended, 72 Stat. 743, 754, 771, as amended; (49 U.S.C. 1324, 1371, 1386))

Effective: May 8, 1974.

Adopted: May 2, 1974.

By the Civil Aeronautics Board.

[SEAL] EDWIN Z. HOLLAND,
Secretary.

[FR Doc.74–10584 Filed 5–7–74;8:45 am]

[8] Based on commuter carriers' reports to the Board for fiscal 1973. In its comments, Executive Air Fleet states that only two Gulfstream II's are now being used by air taxis under the Board's jurisdiction.

[9] Order 71–8–75, August 17, 1971.

Title 19—Customs Duties

CHAPTER I—UNITED STATES CUSTOMS SERVICE, DEPARTMENT OF THE TREASURY

[T.D. 74–143]

PART 148—PERSONAL DECLARATIONS AND EXEMPTIONS

Organization of African Unity

By Executive Order No. 11767 signed February 19, 1974 (39 FR 6603), the President designated the Organization of African Unity (OAU) as a public international organization entitled to enjoy all the privileges, exemptions, and immunities provided for by the International Organizations Immunities Act of December 29, 1945 (59 Stat. 669).

The names of public international organizations currently designated as entitled to free entry privileges under the International Organizations Immunities Act are set forth in § 148.87(b) of the Customs Regulations, together with the number and date of the Executive order by which they were designated.

Accordingly, § 148.87(b) is amended by the following addition (in proper alphabetical order):

§ 148.87 Officers and employees of, and representatives to public international organization.

* * * * *

(b) * * *

Organization	Executive order	Date
Organization of African Unity (OAU).	11767	Feb. 19, 1974

(R.S. 251, as amended, secs. 498, 624, 46 Stat. 728, as amended, 759, sec. 1, 59 Stat. 669; 19 U.S.C. 66, 1498, 1624, 22 U.S.C. 288)

Inasmuch as this amendment merely corrects the listing of organizations entitled by law to claim free entry privileges as public international organizations, notice and public procedure thereon are found to be unnecessary and good cause exists for dispensing with a delayed effective date under the provisions of 5 U.S.C. 553.

[SEAL] LEONARD LEHMAN,
Acting Commissioner of Customs.

Approved: April 25, 1974.

MATTHEW J. MARKS,
Acting Assistant Secretary of the Treasury.

[FR Doc.74–10535 Filed 5–7–74;8:45 am]

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

SUBCHAPTER C—AIR PROGRAMS

PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

Maintenance of National Ambient Air Quality Standards

On June 18, 1973 (38 FR 15834), the Administrator of the Environmental Protection Agency promulgated, among other provisions, revisions to 40 CFR Part 51, § 51.12. In part, these revisions require that State implementation plans identify by March 18, 1974 (9 months after the effective date of publication), areas which may have the potential for exceeding any national standard within the next 10-year period due to current air quality and/or projected growth rate. Under the same revisions, the Administrator was to publish by June 18, 1974, based upon this information submitted by the States, a list of potential problem areas which will be analyzed in more detail by the States. Then by June 18, 1975 (24 months after the effective date of promulgation), the States are required to submit an analysis of the impact on air quality of projected growth in each potential problem area designated by the Administrator. Where necessary, the States must also submit plans containing measures to ensure maintenance of the national standards during the ensuing 10-year period.

On January 15, 1974, the Office of Air Quality Planning and Standards issued to the States the EPA–OAQPS document, "Guidelines for Designation of Air Quality Maintenance Areas," which describes techniques which the States could use in identifying potential problem areas. This document was made available for public inspection in the FEDERAL REGISTER of February 25, 1974 (38 FR 7196). These guidelines specified that the States should analyze, as a minimum, all Standard Metropolitan Statistical Areas (SMSAs) within their jurisdiction. The Administrator has subsequently monitored the process of problem area identification, as undertaken by the States, through contact with EPA's ten regional offices. He has been favorably impressed by the efforts that most States have been making in analyzing areas, identifying problem areas and scheduling public hearings. It has become apparent, however, that States have been unable to submit the material required by the scheduled March 18, 1974, deadline. The Administrator had two basic choices as a result:

(a) to maintain the scheduled deadline, disapprove all State plans specifically for failure to comply with the provisions of § 51.12(e) (with the exception of States which do not contain Standard Metropolitan Statistical Areas), propose a list of problem areas, hold hearings and publish a final list on June 18, 1974; or

(b) to extend the deadline for a short period.

If the Administrator were to follow the former course of action, he would have to propose his own list of areas, knowing

full well that most States were in the process of developing their lists and scheduling public hearings. As the Administrator's own rulemaking process carried forward, substantial confusion and duplication of effort would ensue. Such confusion could hinder full public participation in the formulation of the list of potential problem areas. Also, several States had requested that the Administrator extend the date for submittal of problem area identification so that the States could prepare the material more thoroughly and provide for more extensive public involvement.

Consequently, the Administrator decided to extend:

(a) the date for State submission of the identification of potential problem areas from March 18, 1974, to May 10, 1974; and

(b) the date for EPA publication of the list of potential problem areas, as based upon material submitted by the States from June 18, 1974, to August 16, 1974.

This action is anticipated to result in approximately 30 to 40 States being able to hold hearings on and submit area identification material by the revised deadline. The action below effects these extensions.

These amendments are being promulgated in final form without having first been proposed and subjected to public comment. The Administrator has found that the procedure of proposal and entertainment of public comment would be impracticable in this situation since States must be able to rely upon the new time schedule immediately. It should be stressed that the date required for submittal of the analysis of the impact on air quality of projected growth and 10-year maintenance plan in these areas remains the same—June 18, 1975. In order to avoid confusion, § 51.12(g) is also being amended to specify this June 18, 1975, date for submission, rather than implying it by requiring submission 24 months from the date of promulgation of the above-cited revisions to 40 CFR 51.12 on June 18, 1973.

(Secs. 110, 301(a), Clean Air Act, as amended 42 U.S.C. 1857c-5, 1857g(a))

Dated: May 2, 1974.

JOHN QUARLES,
Acting Administrator.

In § 51.12 of 40 CFR, Part 51, paragraphs (e) (2), (f) and (g) are revised to read as follows:

§ 51.12 **Control strategy: General.**

* * * * *

(e) * * *

(2) The area identification and description of method and timing required by this paragraph shall be submitted no later than May 10, 1974.

* * * * *

(f) Based on the information submitted by the State pursuant to paragraph (e) of this section, the Administrator will publish by August 16, 1974, a list of the areas which shall be subject to the requirements of paragraph (g) of this section.

(g) For each area identified by the Administrator pursuant to paragraph (f) of this section, the State shall submit, no later than June 18, 1975, the following:

(1) An analysis of the impact on air quality of projected growth and development over the 10-year period from the date of submittal.

(2) A plan to prevent any national standards from being exceeded over the 10-year period from the date of plan submittal. Such plan shall include, as necessary, control strategy revisions and/or other measures to insure that projected growth and development will be compatible with maintenance of the national standards throughout such 10-year period. Such plan shall be subject to the provisions of § 51.6.

* * * * *

[FR Doc.74-10589 Filed 5-7-74;8:45 am]

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Final Reclassification of Air Quality Control Regions

On June 8, 1973 (38 FR 15180), the Administrator of the Environmental Protection Agency (EPA) proposed that 43 of the 47 air quality control regions that were originally classified priority I for nitrogen dioxide be reclassified priority III and retain the priority I classification in Los Angeles, Chicago, New Jersey-New York-Connecticut and Wasatch Front. Because there are conflicting data on nitrogen dioxide levels in New Jersey-New York-Connecticut and Wasatch Front, implementation of nitrogen dioxide control measures would not be required at this time.

In addition, based on the proposed reclassification, the Administrator also proposed the following actions with respect to State implementation plans:

1. Revoke his previous disapproval of nitrogen oxides control strategy with respect to the State implementation plans for the air quality control regions listed in Table 4 (June 8, 1973, 38 FR 15180) and withdraw regulations proposed by EPA dealing with control of stationary source emissions of nitrogen dioxide in these AQCR's.

2. Eliminate the requirement that the State of California's transportation control strategy for the San Francisco AQCR provide for attainment of the national standard for nitrogen dioxide; this AQCR is among those to be reclassified priority III. The transportation control strategy for this AQCR still will have to provide for attainment and maintenance of the national standards for carbon monoxide and photochemical oxidants.

3. As appropriate, alter the attainment date tables in notices of EPA action on State plans at 40 CFR Part 52 to indicate that nitrogen dioxide levels are already within the national standard.

Where States have adopted, and EPA has approved, regulations calling for control of nitrogen oxides emissions from stationary sources in AQCR's which would be reclassified from priority I to priority III, EPA will entertain State requests for implementation plan revisions that would rescind such regulations. Such revisions would have to be made in accordance with 40 CFR 51.6.

The Administrator also discussed the re-evaluation of the reference method for measuring nitrogen dioxide which was presented elsewhere in the FEDERAL REGISTER in more detail (38 FR 15174) and the question of validity of the current national air quality standard for nitrogen dioxide.

Sixteen separate comments were received on the proposed reclassification of regions for nitrogen dioxide. Six were from conservation groups or concerned citizens, 4 from state and local agencies, 3 from utility companies, 2 from industry and one from a Federal agency. In consideration of these and other comments, the proposed reclassification has been modified.

Seven comments concurred with EPA proposed actions; however, all but one provided additional comments on the ambient air quality standard or other related matters. 2 comments believed that the reclassification was premature, 2 comments proposed that Baltimore remain priority I, one comment proposed that Metropolitan Providence also remain priority I, 2 comments discussed the role of NO_x in the formation of oxidants, 1 comment suggested that the air quality standard is inconsistent with the concentration used by the Army Corps of Engineers and one comment suggested that an error has been made in publication of the proposal.

The suggested error in the proposal was concerning the classification of the Southeastern Wisconsin Intrastate Region. The region was originally classified priority I for NO_x and should be reclassified priority III. The proposal reflected this action.

The comment suggesting that the national standard is inconsistent with the one used by the Army Corps of Engineers has confused the units for the two concentrations in question. The Corps of Engineers' concentrations are in milligrams per cubic meter while those of EPA are in micrograms per cubic meter.

Comments concerning the role that NO_x plays in the formation of oxidants were addressed in the June 5, 1973, proposal (38 FR 14762) concerned with EPA's proposed action on nitrogen dioxide control strategy. The Agency is currently pursuing further studies to determine the relationship between hydrocarbons and nitrogen dioxide and to better define the role of NO_x in the formation of oxidants.

Three comments from utility companies agreed with EPA's proposed reclassification and requested EPA to encourage states to withdraw regulations dealing with the control of NO_x from stationary sources. However, there was concern over the growth and emission factors that were utilized in the analysis which formed the basis of the interim motor vehicle emission standard. Four

other comments agreed with EPA's proposed action and submitted additional information concerning the national ambient air quality standard.

The information concerning the growth and emission factors utilized in the analysis of the motor vehicle emission standards will be further reviewed and considered as EPA formulates its position on the current motor vehicle emission standard for nitrogen oxides.

Among the comments received concerning the validity of the ambient air quality standard for nitrogen dioxide, opinion varied widely, from those who stated that the nitrogen dioxide standard should be rescinded pending accumulation of additional health effects data to those who judged that the present national standard provided a minimum margin of safety to public health and that extreme caution should be exercised in recommending a less stringent motor vehicle emission standard for nitrogen oxides. These comments will be considered in the continuing work of the Agency to evaluate its current ambient air quality standards and assist in the development of future standards. Further health studies designed to obtain additional data have been instituted and an orderly review of the health effects of nitrogen oxides exposures has been scheduled with the National Academy of Sciences.

Two comments believed EPA's proposed reclassification was premature and that the final action on reclassification should be postponed until more data and health studies are available. EPA is continuing to collect air quality data for nitrogen dioxide along with many State and local agencies. In adidtion, as mentioned previously, the Agency has initiated additional studies of the health effects of nitrogen dioxide. This data will continue to be analyzed and if for any reason the data would indicate that a change should be made, the Agency will see that the appropriate action is taken.

Three comments indicated that the Agency's proposed reclassification for NO_x for two AQCR's is incorrect. Two commentators believe that the Metropolitan Baltimore Region should remain priority I based upon recent data, using the Saltzman method, which indicates that the annual arithmetic mean for NO_2 from June 1972-July 1973 was 130 $\mu g/m^3$. The Saltzman data for 1972 was 109 $\mu g/m^3$. Also, one commentator believes that Metropolitan Providence should also remain priority I based on the Federal reference method data of 203 $\mu g/m^3$. However, EPA has declared the former reference method to be invalid. Additionally, all data obtained for Providence using the candidate methods show that levels are below the national standard and that Providence should be reclassified priority III.

Therefore, based upon the above comments, the air quality data presented in Tables 1 and 2 (38 FR 15180) and additional air quality data for the Baltimore AQCR, the proposed reclassification has been modified.

In light of the error in the reference measurement methodology used to determine nitrogen dioxide levels in the ambient air, the Agency has performed an analysis of the nitrogen dioxide standard for light duty vehicles. In formulating the Agency's position on the motor vehicle standards, growth in nitrogen oxides emissions under a variety of automotive control assumptions were projected and a preliminary review indicates that the motor vehicle standard for nitrogen oxides can be revised.

Wherever all the available data indicate that nitrogen dioxide concentrations were below the priority I cutoff point of 110 micrograms per cubic meter (annual arithmetic mean), EPA is reclassifying those regions to priority III. Thus, 42 AQCR's would be reclassified. The Los Angeles and Chicago AQCR's are the only ones where data from all three candidate methods show nitrogen dioxide concentrations exceeding 110 micrograms. They would remain priority I. In the New Jersey-New York-Connecticut, Wasatch Front (Salt Lake City), Metropolitan Baltimore AQCR's (originally priority I) and Denver AQCR (originally priority III), arsenite data show concentrations below the cutoff point, but chemiluminescence and/or Saltzman data show concentrations above 110 $\mu g/m$. Priority classifications for these four AQCR's would not be changed until more conclusive data are available; however, because the need for implementation of nitrogen oxides control measures in these AQCR's is uncertain, States would not be required to take action at this time to reduce NO_x emissions.

Based on the final reclassification, the Administrator is also finalizing the following actions with respect to State implementation plans:

TABLE 1.—*Air quality control regions affected by proposed revocation of NO_x control strategy disapproval and proposed termination of EPA rulemaking*

AQCR No.	AQCR name	Affected States
015	Phoenix-Tucson	Arizona.
042	Hartford-New Haven-Springfield.	Massachusetts.
045	Philadelphia	Pennsylvania and New Jersey.
070	St. Louis	Missouri.
085	Omaha-Council Bluffs	Nebraska.
123	Detroit-Port Huron	Michigan.
151	Northeast Pennsylvania-Upper Delaware Valley.	Pennsylvania.-New Jersey.
160	Genesee-Finger Lakes	New York.
162	Niagara Frontier	Do.
195	Central Pennsylvania	Pennsylvania.
196	South Central Pennsylvania.	Do.
197	Southwest Pennsylvania	Do.
214	Corpus Christi-Victoria	Texas.
215	Dallas-Fort Worth	Do.
216	Houston-Galveston	Do.
223	Hampton Roads	Virginia.
225	State Capital	Do.

1. Revoke his previous disapproval of nitrogen oxides control strategy with respect to the State implementation plans for the 17 air quality control regions listed in Table 1 and withdraw proposed regulations dealing with control of stationary source emissions of nitrogen oxides in these AQCR's.

2. Eliminate the requirement that the State of California's transportation control strategy for the San Francisco AQCR provide for attainment of the national standard for nitrogen dioxide; this AQCR is among those to be reclassified priority III. The transportation control strategy for this AQCR still will have to provide for attainment of the national standards for carbon monoxide and photochemical oxidants.

3. Retain his disapprovals of nitrogen oxides control strategies for New Jersey-New York-Connecticut, Wasatch Front, and the Metropolitan Baltimore Regions and hold in abeyance his proposed regulations until the final decision can be made on the classification of these regions.

4. As appropriate, alter the attainment date tables in notices of EPA action on State plans at 40 CFR Part 52 to indicate that nitrogen dioxide levels are already within the national standard.

5. Within four months from the date of publication of the revised requirements of 40 CFR 51.14 (published elsewhere in this issue of the FEDERAL REGISTER), 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. With respect to the 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 to demonstration the attainment and maintenance of the nitrogen oxide standard for Los Angeles.

Where States have adopted, and EPA has approved, regulations calling for control of nitrogen oxides emissions from stationary sources in AQCR's which would be reclassified priority III, EPA will entertain State requests for implementation plan revisions that would rescind such regulations. Such revisions would have to be made in accordance with 40 CFR 51.6. However, before such a request is submitted, States should review the necessity of stationary sources control to maintain the national standards for nitrogen oxides.

The regulations promulgated below shall take effect on June 7, 1973.

(42 U.S.C. 1857c-5)

Dated: April 30, 1974.

RUSSELL E. TRAIN,
Administrator.

Subpart B—Alabama

1. In § 52.54, the attainment date table is revised by replacing the letter "a", which designates the date for attainment of the national standard for nitrogen

dioxide in the Metropolitan Birmingham Intrastate Region, with the letter "d".

Subpart D—Arizona

2. In § 52.121, the table is revised by changing the classifications for nitrogen dioxide in the Clark-Mohave Interstate and Phoenix-Tucson Intrastate Regions from "I" to "III", and in the Four Corners Interstate Region from "IA" to "III".

3. Section 52.127 is revoked.

4. In § 52.131, the attainment date table is revised by replacing the letter "a", which designates the date for attainment of the national standard for nitrogen dioxide in the Phoenix-Tucson Intrastate Region, with the letter "c".

Subpart E—Arkansas

5. In § 52.171, the table is revised by changing the classification for nitrogen dioxide in the Metropolitan Memphis Interstate Region from "I" to "III".

6. In § 52.176, the attainment date table is revised by replacing the letter "a", which designates the date for attainment of the national standard for nitrogen dioxide in the Metropolitan Memphis Interstate Region, with the letter "c".

Subpart F—California

7. In § 52.221, the table is revised by changing the classifications for nitrogen dioxide in the San Francisco Bay Area and the San Diego Intrastate Regions from "I" to "III".

Subpart G—Colorado

8. In § 52.321, the table is revised by changing the classification for nitrogen dioxide in the Four Corners Interstate Region from "IA" to "III".

9. In § 52.325, the attainment date table is revised by replacing the letter "a", which designates the date for attainment of the national standard for nitrogen dioxide in the Four Corners Interstate Region, with the letter "d".

Subpart H—Connecticut

10. In § 52.371, the table is revised by changing the classification for nitrogen dioxide in the Hartford-New Haven-Springfield Interstate Region from "I" to "III".

11. In § 52.374, the attainment date table is revised by replacing the date "June 1975" for attainment of the national standard for nitrogen dioxide in the Hartford-New Haven-Springfield Interstate Region with the letter "c".

Subpart I—Delaware

12. In § 52.421, the table is revised by changing the classification for nitrogen dioxide in the Metropolitan Philadelphia Interstate Region from "I" to "III".

13. In § 52.428, the attainment date table is revised by replacing the date "January 1974" for attainment of the national standard for nitrogen dioxide in the Metropolitan Philadelphia Interstate Region with the letter "a".

Subpart J—District of Columbia

14. In § 52.471, the table is revised by changing the classification for nitrogen dioxide in the National Capital Interstate Region from "I" to "III".

15. In § 52.481, the attainment date table is revised by replacing the date "July 1975" for attainment of the national standard for nitrogen dioxide in the National Capital Interstate Region with the letter "c" and by adding footnote "c" to read as follows:

c. Air quality levels presently below secondary standard.

Subpart K—Florida

16. In § 52.521, the table is revised by changing the classifications for nitrogen dioxide in the West Central Florida and Southeast Florida Intrastate Regions from "I" to "III".

17. In § 52.523, the attainment date table is revised by replacing the letter "a", which designates the date for attainment of the national standard for nitrogen dioxide in the West Central Florida and the Southeast Florida Intrastate Regions, with the letter "c".

Subpart L—Georgia

18. In § 52.571, the table is revised by changing the classifications for nitrogen dioxide in the Metropolitan Atlanta Intrastate and Chattanooga Interstate Regions from "I" to "III".

19. In § 52.575, the attainment date table is revised by replacing the letter "a", which designates the date for attainment of the national standard for nitrogen dioxide in the Metropolitan Atlanta Intrastate and the Chattanooga Interstate Regions, with the letter "c".

Subpart O—Illinois

20. In § 52.721, the table is revised by changing the classifications for nitrogen dioxide in the Metropolitan St. Louis (Missouri-Illinois) Interstate Region from "I" to "III", and the Metropolitan Dubuque Interstate Region from "IA" to "III".

21. In § 52.727, the attainment date table is revised by replacing the date "July 1975" for attainment of the national standard for nitrogen dioxide in the Metropolitan Dubuque and the Metropolitan St. Louis (Missouri-Illinois) Interstate Regions with the letter "c".

Subpart P—Indiana

22. In § 52.771, the table is revised by changing the classifications for nitrogen dioxide in the Louisville and the Metropolitan Cincinnati Interstate Regions and the Metropolitan Indianapolis Intrastate Region from "I" to "III".

23. In § 52.783, the attainment date table is revised by replacing the letter "a", which designates the date for attainment of the national standard for nitrogen dioxide in the Louisville and the Metropolitan Cincinnati Interstate Regions and in the Metropolitan Indianapolis Intrastate Region, with the letter "e".

Subpart Q—Iowa

24. In § 52.821, the table is revised by changing the classifications for nitrogen dioxide in the Metropolitan Omaha-Council Bluffs and from "I" to "III" and in the Metropolitan Dubuque Interstate Regions from "IA" to "III."

25. In § 52.827, the attainment date table is revised by replacing the letter "a", which designates the date for attainment of the national standard for nitrogen dioxide in the Metropolitan Omaha-Council Bluffs and the Metropolitan Dubuque Interstate Regions, with the letter "c".

Subpart S—Kentucky

26. In § 52.921, the table is revised by changing the classifications for nitrogen dioxide in the Louisville and Metropolitan Cincinnati Interstate Regions from "I" to "III".

27. In § 52.926, the attainment date table is revised by replacing the letter "a", which designates the date for attainment of the national standard for nitrogen dioxide in the Louisville and the Metropolitan Cincinnati Interstate Regions, with the letter "c".

Subpart V—Maryland

28. In § 52.1071, the table is revised by changing the classifications for nitrogen dioxide in the Metropolitan Baltimore Intrastate and National Capital Interstate Regions from "I" to "III".

29. Section 52.1075 is revoked.

30. In § 52.1078, the attainment date table is revised by replacing the letter "a", which designates the date for attainment of the national standard for nitrogen dioxide in the Metroloplitan Baltimore Intrastate and the National Capital Interstate Regions, with the letter "d".

Subpart W—Massachusetts

31. In § 52.1121, the table is revised by changing the classifications for nitrogen dioxide in the Metropolitan Boston and Central Massachusetts Intrastate Regions and the Metropolitan Providence and Hartford-New Haven-Springfield Interstate Regions from "I" to "III."

32. Section 52.1124 is revoked.

33. In § 52.1127, the attainment date table is revised by replacing "a" for attainment of the national standard for nitrogen dioxide in the Metropolitan Boston and the Central Massachusetts Intrastate Regions and the Hartford-New Haven-Springfield Interstate Region with the letter "e".

Subpart X—Michigan

34. In § 52.1171, the table is revised by changing the classifications for nitrogen dioxide in the Metropolitan Detroit-Port Huron and Central Michigan Intrastate Regions and the Metropolitan Toledo Interstate Region from "I" to "III".

35. Section 52.1174 is revoked.

36. In § 52.1177, the attainment date table is revised by replacing the letter "a", which designates the date for attainment of the national standard for nitrogen dioxide in the Metropolitan Detroit-Post Huron and the Central Michigan Intrastate Regions and in the Metropolitan Toledo Interstate Region, with the letter "c".

Subpart Y—Minnesota

37. In § 52.1221, the table is revised by changing the classification for nitrogen dioxide in the Minneapolis-St. Paul Intrastate Region from "I" to "III".

38. In § 52.1226, the attainment date table is revised by replacing the letter "a", which designates the date for attainment of the national standard for nitrogen dioxide in the Minneapolis-St. Paul Intrastate Region, with the letter "d".

Subpart Z—Mississippi

39. In § 52.1271, the table is revised by changing the classification for nitrogen dioxide in the Metropolitan Memphis Interstate Region from "I" to "III".

40 In § 52.1273, the attainment date table is revised by replacing the date "June 1975" for attainment of the national standard for nitrogen dioxide in the Metropolitan Memphis Interstate Region with the letter "b".

Subpart AA—Missouri

41. In § 52.1321, the table is revised by changing the classification for nitrogen dioxide in the Metropolitan St. Louis Interstate Region from "I" to "III".

42. Section 52.1326 is revoked.

43. In § 52.1332, the attainment date table is revised by replacing the letter "a", which designates the date for attainment of the national standard for nitrogen dioxide in the Metropolitan St. Louis Interstate Region, with the letter "c".

Subpart CC—Nebraska

44. In § 52.1421, the table is revised by changing the classification for nitrogen dioxide in the Metropolitan Omaha-Council Bluffs Interstate Region from "I" to "III".

45. In § 52.1431, the attainment date table is revised by replacing the letter "a", which designates the date for attainment of the national standard for nitrogen dioxide in the Metropolitan Omaha-Council Bluffs Interstate Region, with the letter "c".

46. Section 52.1433 is revoked.

Subpart DD—Nevada

47. In § 52.1471, the table is revised by changing the classification for nitrogen dioxide in the Clark-Mohave Interstate Region from "I" to "III".

Subpart FF—New Jersey

48. In § 52.1571, the table is revised by changing the classifications for nitrogen dioxide in the Metropolitan Philadelphia and Northeast Pennsylvania-Upper Delaware Valley Interstate Regions from "I" to "III".

49. Section 52.1576 is revised to delete the references to the Metropolitan Philadelphia and Northeast Pennsylvania-Upper Delaware Valley Interstate Regions.

50. In § 52.1580, the attainment date table is revised by replacing the letter "d", which designates the date for attainment of the national standard for nitrogen dioxide in the New Jersey-New York-Connecticut region with the letter "a".

Subpart GG—New Mexico

51. In § 52.1621, the table is revised by changing the classification for nitrogen dioxide in the Four Corners Interstate Region from "IA" to "III".

Subpart HH—New York

52. In § 52.1671, the table is revised by changing the classifications for nitrogen dioxide in the Niagara Frontier and Genesee-Finger Lakes Intrastate Regions from "I" to "III".

53. Section 52.1676 is revised to delete any reference to the Niagara Frontier and Genesee-Finger Lakes Intrastate Regions.

54. In § 52.1682, the attainment date table is revised by replacing the letter "a" for attainment of the national standard for nitrogen dioxide in the Niagara Frontier and the Genesee-Finger Lakes Intrastate Regions with the letter "e".

Subpart KK—Ohio

55. In § 52.1871, the table is revised by changing the classifications for nitrogen dioxide in the Greater Metropolitan Cleveland, Metropolitan Columbus and the Metropolitan Dayton Intrastate Regions and the Metropolitan Cincinnati and Metropolitan Toledo Interstate Regions from "I" to "III".

56. In § 52.1875, the attainment date table is revised by replacing the letter "a", which designates the date for attainment of the national standard for nitrogen dioxide in the greater Metropolitan Cleveland, Metropolitan Columbus, and the Metropolitan Dayton Intrastate Regions and in the Metropolitan Cincinnati and the Metropolitan Toledo Interstate Regions, with the letter "e".

Subpart MM—Oregon

57. In § 52.1973, the attainment date table is revised by replacing the date "May, 1975" for attainment of the national standard for nitrogen dioxide in the Portland Interstate Region with the letter "b".

Subpart NN—Pennsylvania

58. In § 52.2021, the table is revised by changing the classifications for nitrogen dioxide in the Metropolitan Philadelphia and Northeast Pennsylvania-Upper Delaware Valley Interstate Regions and in the South Central Pennsylvania, Central Pennsylvania and the Southwest Pennsylvania Intrastate Regions from "I" to "III".

59. Section 52.2027 is revoked.

60. In § 52.2034, the attainment date table is revised by replacing the letter "a", which designates the date for attainment of the national standard for nitrogen dioxide in the Metropolitan Philadelphia and the Northeast Pennsylvania Upper Delaware Valley Interstate Regions and in the South Central Pennsylvania, Central Pennsylvania and the Southwest Pennsylvania Intrastate Regions, with the letter "e".

Subpart OO—Rhode Island

61. In § 52.2071, the table is revised by changing the classification for nitrogen dioxide in the Metropolitan Providence Interstate Region from "I" to "III".

62. In § 52.2076, the attainment date table is revised by replacing the letter "a", which designates the date for attainment of the national standard for nitrogen dioxide in the Metropolitan Providence Interstate Region, with the letter "b".

Subpart RR—Tennessee

63. In § 52.2221, the table is revised by changing the classifications for nitrogen dioxide in the Chattanooga and Metropolitan Memphis Interstate Regions from "I" to "III".

64. In § 52.2230, the attainment date table is revised by replacing the letter "a", which designates the date for attainment of the national standard for nitrogen dioxide in the Chattanooga and the Metropolitan Memphis Interstate Regions, with the letter "c".

Subpart SS—Texas

65. In § 52.2271, the table is revised by changing the classifications for nitrogen dioxide in the Corpus Christi-Victoria, Metropolitan Houston-Galveston and the Metropolitan Dallas-Fort Worth Intrastate Regions from "I" to "III".

66. Section 52.2276 is revoked.

67. In § 52.2279, the attainment date table is revised by replacing the date July, 1975, which designates the date for attainment of the national standard for nitrogen dioxide in the Corpus Christi-Victoria, Metropolitan Houston-Galveston, and the Metropolitan Dallas-Fort Worth Instrastate Regions, with the letter "a".

Subpart TT—Utah

68. In § 52.2321, the table is revised by changing the classification for nitrogen dioxide in the Four Corners Interstate Region from "IA" to "III".

69. In § 52.2331, the attainment date table is revised by replacing the letter "a", which designates the date for attainment of the national standard for nitrogen dioxide in the Four Corners Interstate Region, with the letter "c".

Subpart VV—Virginia

70. In § 52.2421, the table is revised by changing the classification for nitrogen dioxide in the State Capital and Hampton Roads Intrastate Regions and the National Capital Interstate Region from "I" to "III".

71. Section 52.2426 is revoked.

72. In § 52.2429, the attainment date table is revised by replacing the letter "a", which designates the date for attainment of the national standard for nitrogen dioxide in the State Capital and the Hampton Roads Intrastate Regions, and by replacing the date "June, 1975" for attainment of the national standard for nitrogen dioxide in the National Capital Interstate Region with the letter "d".

Subpart WW—Washington

73. In § 52.2471, the table is revised by changing the classification for nitrogen dioxide in the Puget Sound Intrastate Region from "I" to "III".

74. In § 52.2478, the attainment date table is revised by replacing the date

"July 1975" for attainment of the national standard for nitrogen dioxide in the Puget Sound Intrastate Region with the letter "b".

Subpart YY—Wisconsin

75. In § 52.2571, the table is revised by changing the classifications for nitrogen dioxide in the Southeastern Wisconsin Intrastate Region from "I" to "III", and in the Metropolitan Dubuque Interstate Region from "IA" to "III".

76. In § 52.2577, the attainment date table is revised by replacing the letter "a", which designates the date for attainment of the national standard for nitrogen dioxide in the Southeastern Wisconsin Intrastate Region and in the Metropolitan Dubuque Interstate Region, with the letter "c".

[FR Doc.74-10440 Filed 5-7-74;8:45 am]

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Hawaii; Approval and Disapproval of Compliance Schedules

On May 31, 1972 (37 FR 10842), July 27, 1972 (37 FR 15080), and May 14, 1973 (38 FR 12711), pursuant to section 110 of the Clean Air Act and 40 CFR Part 51, the Administrator approved portions of the Hawaii plan for the implementation of the national ambient air quality standards. On July 27, 1973, after notice and public hearings, the Governor of Hawaii submitted to the Environmental Protection Agency (EPA) revisions to the compliance schedule portion of the approved plan.

Thirty-five state compliance orders and three state variances were submitted. On February 22, 1974 (39 FR 6726) EPA proposed that the thirty-five orders be approved as compliance schedule revisions to the Hawaii implementation plan, and that the three variances be disapproved. On February 27, 1974, the State of Hawaii Department of Heatlh notified EPA that four of the sources subject to approvable compliance schedules (Honiron Division of Ward Foods, Inc., Pacific Concrete and Rock, Ltd., Ka'u Sugar Co., Pahala Mill and Ka'u Sugar Co., Honuapo Mill) and one source subject to an unapprovable variance (Hawaiian Fruit Packers, Ltd.) had achieved compliance prior to December 31, 1973. Three additional sources (Hawaiian Western Steel, Ltd., Construction Materials Hawaii, Inc., and Hawaiian Bitumuls and Paving Co., Ltd., Puunene Plant) are subject to compliance schedules with final compliance dates which have already passed. The approval and disapproval actions related to these sources have been deleted from this final notice of rulemaking.

The remaining twenty-eight compliance orders have been found to satisfy the requirements of 40 CFR 51.15 and to be consistent with the approved control strategy. The remaining two variances, issued to the Nanakuli Paving and Rock Co., Ltd., Molokai asphalt plant and the Kohala Corp. sugar mill, do not explicitly require compliance with particulate matter emission regulations, and allow noncompliance to extend beyond the ambient air quality standards attainment date for particulate matter. They do not, therefore, meet the requirements of 40 CFR 51.15, and must be disapproved.

Each compliance schedule revision establishes a new date by which an individual source must comply with an emission limitation specified by the implementation plan. This date is indicated in the table below, under the heading "Final Compliance Date." In each case, the schedule includes incremental steps towards compliance which are not listed in the table. Some schedules require compliance by specifying the installation of specific control devices or by the construction of new equipment and the shutdown of existing equipment. Approval of these schedules is solely on the basis that compliance is required by the specified "Final Compliance Date," regardless of the method of control specified by the schedule.

EPA has received no comments in response to the publication of the proposed approvals and disapprovals (39 FR 6726 Feb. 22, 1974). An evaluation of each schedule, as well as the schedule itself, is available for public inspection at the Hawaii Department of Health and the Region IX office of EPA at the addresses noted below. In each case, the record of the appropriate public hearing has been reviewed and considered.

Environmental Protection Agency, Region IX
Enforcement Division, Room 302
100 California Street
San Francisco CA 94111

Environmental Protection Agency, Region IX
Pacific Islands Basin Office
1000 Bishop Street
Honolulu HI 96813

Hawaii State Department of Health
Air Sanitation Branch
Kapuiawa Building
Honolulu HI 96801

(42 U.S.C. 1857c-5)

Dated: May 1, 1974.

JOHN QUARLES,
Acting Administrator.

Part 52 of 40 CFR Chapter I is amended as follows:

Subpart M—Hawaii

1. A new § 52.626 is added as follows:

§ 52.626 Compliance schedules.

(a) The compliance schedules for the sources identified below are approved as meeting the requirements of § 51.15 of this chapter. All regulations cited are air pollution control regulations of the State. Some schedules require compliance by specifying the installation of specific control devices or by the construction of new equipment and the shutdown of existing equipment. Approval of these schedules is solely on the basis that compliance is required by the specified "Final Compliance Date", regardless of the method of control specified by the schedule.

Source	Location	Regulation sections involved	Date of adoption	Effective date	Final compliance date
Grove Farm Co., Inc	Koloa	12	July 27, 1973	Immediately	June 30, 1975
City and county of Honolulu	Kewalo	8, 11	do	do	July 31, 1975
County of Kauai	Lihue	7, 8	do	do	Do.
Do	Hanalei	7, 8	do	do	Do.
Do	Kekaha	7, 8	do	do	Do.
Do	Eleele	7, 8	do	do	Do.
Do	Koloa	7, 8	do	do	Do.
Do	Kapaa	7, 8	do	do	Do.
The Lihue Plantation Co., Ltd	Lihue	8, 12	do	do	Jan. 31, 1975
Oahu Sugar Co., Ltd	Waipahu	8, 12	do	do	Dec. 31, 1974
Pioneer Mill Co., Ltd	Lahaina	8, 12	do	do	June 30, 1974
Hawaiian Bitumuls & Paving Co., Ltd.	Puhi	8, 13	do	do	Do.
Do	Kaena	8, 13	do	do	Dec. 31, 1974
Hilo Coast Processing Co	Hakalau	8, 12	do	do	June 30, 1974
Do	Wainaku	8, 12	do	do	Do.
McBryde Sugar Co. Ltd	Eleele	8, 12	do	do	July 31, 1975
Laupahoehoe Sugar Co	Oakala	8, 12	do	do	July 1, 1974
Honokaa Sugar Co	Haina	8, 12	do	do	May 31, 1975
Hawaiian Commercial & Sugar Co.					
Boilers 11 and 12	Puunene	8, 12	do	do	July 1, 1975
Boilers 7, 8, 9, 10	do	8, 12	do	do	Do.
Boilers	Paia	8, 12	do	do	Do.
Kiln	do	8, 13	do	do	June 15, 1974
Kaiser Cement & Gypsum Corp	Nanakuli	13	do	do	Mar. 31, 1975
Nanakuli Paving & Rock Co., Ltd	Halawa	8, 13	do	do	Mar. 1, 1975
Jas. W. Glover, Ltd	Hilo	13	do	do	Apr. 1, 1975
City and County of Honolulu	Waipahu	8, 11	do	do	July 31, 1975
Do	Kapalama	8, 11	do	do	Do.
Hawaiian Cement Corp	Ewa Beach	8, 13	do	do	Feb. 28, 1975

(b) The compliance schedules for the sources identified below are disapproved as not meeting the requirements of § 51.15 of this chapter. The regulations cited are air pollution control regulations of the State.

Source	Location	Regulation sections involved	Date of adoption
Nanakuli Paving & Rock Co., Ltd.	Molokai	8, 13	July 27, 1973
Kohala Corp	Halaula	8, 12	Do.

[FR Doc.74-10441 Filed 5-7-74;8:45 am]

Title 47—Telecommunication

CHAPTER I—FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 18179; FCC 74-382]

PART 73—RADIO BROADCAST SERVICES

Non-Network Programs

In the matter of amendment of Part 73 of the Commission's rules with respect to the availability of television programs produced by non-network suppliers (38 FR 34325) to commercial television stations and CATV systems.

1. On August 3, 1973, the Commission released the First Report and Order in this docket (FCC 73-806, 42 F.C.C. 2d 175) in which a rule was adopted limiting geographical exclusivity in non-network program contracts between television stations and program suppliers. The rule as adopted reads as follows:

Section 73.658 Affiliation agreements and network program practices; territorial exclusivity in non-network program arrangements.

* * * * *

(m) *Territorial exclusivity in non-network arrangements.* No television station shall enter into any contract, arrangement or understanding, express or implied, with a non-network program producer, distributor, or supplier, or other person which prevents or hinders another television station located in a community over 25 miles away, as determined by the reference points contained in § 76.53 of this chapter, from broadcasting any program purchased by the former station from such non-network program producer, distributor, supplier, or other person. As used in this subsection, the term "community" is defined as the community specified in the instrument of authorization as the location of the station.

NOTE 1: Contracts, arrangements, or understandings that are complete under the practices of the industry prior to August 7, 1973, will not be disturbed. Extensions or renewals of such agreements are not permitted because they would in effect be new agreements without competitive bidding. However, such agreements that were based on the broadcaster's advancing "seed money" for the production of a specific program or series that specify two time periods—a tryout period and a period thereafter for general exhibition—may be extended or renewed as contemplated in the basic agreement.

2. The rule was to have been effective September 7, 1973. However, on August 31, 1973 (FCC 73-890, 38 FR 24367), the Commission stayed the effective date of the rule until November 12, 1973. The stay was issued in response to requests of the Association of Maximum Servide Telecasters and others stating that they intended to file petitions for reconsideration of the Commission's action adopting the rule as set forth above. The parties filing timely petitions for reconsideration are listed below.[1] Because of unavoidable delays in the publication of public notices of the filing of several of the petitions for reconsideration, the last date for filing opposition pleadings to the petitions for reconsideration was October 1, 1973. (Order Extending Time for Filing Responses to Petitions for Reconsideration, Mimeo No. 08017, 38 FR 27218, issued September 24, 1913.) Opposition pleadings filed on or before October 1, 1973, were submitted by the parties listed below.[2]

3. The rule, as adopted, provides that program contracts negotiated on or after August 7, 1973, for non-network program material cannot provide for geographical exclusivity in excess of 25 miles from the community of license as determined by reference points contained in § 76.53 of the Commission's rules. The requests for stay set forth two primary grounds for reconsideration: (a) the 25-mile rule would prohibit exclusivity in recognized multi-city markets, and (b) the 25-mile standard amounted to an inadvertent modification of the exclusivity provided to television stations by the Commission's action in adopting the cable television rules in 1972. The Commission issued the aforementioned November 12 stay to enable it to act on the petitions for reconsideration. A major consideration in staying the effective date of the rule was to enable parties to comment on the question of exclusivity given to television stations by the 1972 cable rules which were adopted long after the filing date (February 10, 1969) for comments in the geographical exclusivity portion of this proceeding. Because of the complexity of the issues, the Commission, in response to several requests, by Order of November 9, 1973 (FCC 73-1152, 38 FR 31680), stayed the effective date of the rule indefinitely pending action on the petitions for reconsideration. On December 6, 1973, the Commission issued a public notice (FCC 73-1278, 38 FR 34325) stating that it contemplated having the petitions for reconsideration acted on by mid-January, 1974.

4. The views expressed in the petitions for reconsideration and subsequent pleadings will be generally treated on a topical basis, except in cases where specific views should be identified.

5. NCTA supports the 25-mile standard and urges that the Commission should reduce the exclusivity that a television station may secure against cable systems to 25 miles, the standard adopted by the First Report and Order herein. The oppositions of MCA, Program Suppliers, and Metromedia were specifically directed against the NCTA petition. The main premise in these three oppositions is that the exclusivity given to television stations (35 miles) by the 1972 cable rules cannot be modified without notice to and opportunity to comment by the stations. As to the NCTA petition, AMST, RKO, Midwest, and Spartan also challenge the Commission's authority to revise exclusivity permitted by the cable proceeding without notice to the parties. The comments of the parties opposing the NCTA suggestion were lengthy and vigorous. Because of the notice requirements of the Administrative Procedure Act, 5 U.S.C. 553(b), regarding notice and opportunity to comment, we are unable to consider the NCTA proposal.

6. All other parties oppose the 25-mile standard. Most urge that the Commission revoke it and handle any abuses of excess exclusivity on a complaint basis in an ad hoc manner. Some, while advocating repeal of the 25-mile standard, also propose specific alternative standards. Those alternative proposals will be analyzed in detail.

7. AMST filed a lengthy petition for reconsideration which claims that the 25-mile rule is far too broad and pervasive because it prohibits exclusivity in over 50 recognized multi-city television markets in which exclusivity is proper. It contends that the rule does not recog-

[1] Petitions for reconsideration: Association of Maximum Service Telecasters (AMST); Belo Broadcasting Corporation (Belo); Broadcast-Plaza, Inc. (Broadcast-Plaza); Cedar Rapids Television Company (Cedar Rapids); The Corinthian Stations and The Orion Stations (Corinthian and Orion); Daily Telegraph Printing Company (Daily Telegraph); Gateway Communications, Inc. (Gateway); Kaiser Broadcasting Company (Kaiser); Kansas State Network, Inc. (Kansas); Kelly Broadcasting Company (Kelly); King Broadcasting Co., et al. (King); McGraw-Hill Broadcasting Company, Inc. (McGraw-Hill); Metromedia, Inc. (Metromedia); Midwest Television, Inc. (Midwest); Multimedia, Inc. (Multimedia); National Association of Broadcasters (NAB); National Cable Television Association; Inc. (NCTA); Newhouse Broadcasting Corporation (Newhouse); Roy H. Park Broadcasting of Roanoke, Inc. (Park); Ponce Television Corporation (Ponce); RKO General, Inc., et al. (RKO); Rust Craft Broadcasting Company (Rust Craft); The Spartan Radiocasting Company (Spartan); Storer Broadcasting Company (Storer); Telemundo, Inc. (Telemundo); WAPA-TV Broadcasting Corporation (WAPA); Wichita-Hutchinson Company, Inc. (Wichita-Hutchinson); WGAL Television, Inc. (WGAL); WGN Continental Broadcasting Company (WGN); WJAC, Incorporated (WJAC); and Wometco Skyway Broadcasting Company (Wometco).

[2] Oppositions to petitions for reconsideration: American Broadcasting Companies, Inc. (ABC); Association of Maximum Service Telecasters (AMST); Columbia Pictures Industries, Inc. et al. (Program Suppliers); Corvallis TV Cable Co. (Corvallis); MCA, Inc. (MCA); Metromedia, Inc. (Metromedia); Midwest Television, Inc. (Midwest); RKO General, Inc., et al. (RKO); Scripps-Howard Broadcasting Company (Scripps-Howard); The Spartan Broadcasting Company (Spartan); Suburban Broadcasting Corporation (Suburban); Summit Radio Corporation (Summit); and WKRG-TV, Inc. (WKRG). Reply pleadings were timely filed by RKO; AMST; and WGN. The Association of Independent Television Stations, Inc. and Paducah Newspapers, Inc., Paducah, Kentucky, filed pleadings in the nature of petitions for reconsideration past the due date for filing such pleadings; they presented no material not contained in the pleadings that were timely filed, and they will be dismissed.

nize the economic facts of the television market places, i.e., stations in actual competitive situations, and, instead, bases the exclusivity standard on the historical accident that stations were allocated to cities that are over 25 miles apart. It claims that because of the vast differences in the geographical areas of television markets, a single mileage figure based on reference points will not work. (AMST also contends that the 25-mile rule sharply restricts permissible exclusivity, insofar as cable television is concerned, in hyphenated markets.) As examples of such difference in area, AMST sets forth the Dallas-Fort Worth situation (where the separation is over 100 miles). It contends that Bismarck and Minot, because of satellite operations, are full competitors. In contrast, AMST points out, because there are two distinct recognized markets involved, there may well be a question of the propriety of any exclusivity in the case of the Hartford, Connecticut-Springfield, Massachusetts situation even though, by reference points, the cities are only 22 miles apart.

8. AMST states that the Commission's intention was to "free up" programming in situations wherein there is a small overlap of service area, but that in the First Report and Order, the rule adopted is rather to protect stations in "overshadowed" cities (cities in or near a larger television market) which serve "fringe area" audiences and which are in actual direct competition with the larger city station. AMST then sets forth eight specific situations of cities with reference points over 25 miles apart whose television stations are direct competitors. AMST concludes that there should be no rule, but rather a general policy statement should be adopted that outlines the Commission's concern with the problem of geographical exclusivity.

9. Nevertheless, AMST does set forth alternative solutions to the 25-mile rule, should the Commission not adopt its suggestion to rescind the rule and use the case-by-case method. The alternatives are: (1) a television station should at least be permitted to contract for exclusivity up to 35 miles (the specified zone of a television station defined in § 76.5 of the rules); (2) a television station should be permitted to contract for exclusivity against other stations in "designated" or "name" communities that are traditionally part of the same hyphenated market; and (3) case-by-case exceptions to the foregoing rules, but without evidentiary hearings.

10. Specific multi-city market problems are set forth in the pleadings of AMST, Belo, Broadcast-Plaza, Cedar Rapids, Corinthian and Orion, Daily Telegraph, Gateway, King, Kansas, Kelly, McGraw-Hill, Midwest, Multimedia, Newhouse, Park, Rust Craft, Spartan, Wichita-Hutchinson, WGAL, WKRG, and Wometco. All of the foregoing petitioners urge recision or revision of the rule. The petitions of Storer, Metromedia, NAB, Kaiser, RKO, WJAC, and WGN, oppose this aspect of the rule as adopted, but were topical rather than covering a specific multi-city market problem. MCA, in its opposition to the NCTA petition, also urges the Commission to reconsider the multi-city market question. Kaiser, who filed comments on the territorial exclusivity question, urges, should the 25-mile standard not be modified, that the Commission adopt a definite waiver policy to ameliorate the harshness that could occur in multi-city situations. RKO disagrees with the waiver position urged by Kaiser, because it would "work unreasonably and unequitably in all markets in which it would have an impact."

11. RKO and WGN, like AMST, urge that the Commission adopt the ad hoc approach to resolve any multi-city situations where abuses are turned up in exclusivity involving syndicated programming. Should the Commission not permit exclusivity against stations in other communities of hyphenated markets, Kaiser also asks that the Commission clarify the methods permitted to a licensee, consonant with the rule, to protect itself should the program be sold to a station in another community in the multi-city market. Ponce, Telemundo and WAPA–TV are licensees of Puerto Rican stations and contend that all communities of Puerto Rico should be considered to be one market with any TV station on the island being able to secure exclusivity against other stations on the island.

12. Suburban, the permittee of a UHF television station in Patchogue, New York, which is somewhat overshadowed by the New York City television stations, in its opposition pleading, states that it is in general support of the 25-mile rule. The opposition pleadings by Corvallis and Summit respectively the licensees of "overshadowed" stations KVDO and WAKR–TV in Salem, Oregon, and Akron, Ohio, submit alternative solutions for resolving the overshadowed situations. VHF Station KVDO at Salem is located 45 miles from Portland, Oregon. Heretofore, most non-network program contracts between the Portland stations and the suppliers provided for exclusivity against the Salem station. The solution proposed by Corvallis is to revise the rule by deleting the 25-mile standard and prohibiting the securing of exclusivity against an "overshadowed" station. Corvallis proposes a revised rule that lists "overshadowed communities" to be Akron, Ohio; Fond du Lac, Wisconsin; Manchester, New Hampshire; Modesto, California; Salem, Oregon; San Jose, California; Tulare, California; and Worcester, Massachusetts. Stations in the foregoing eight communities, either in the comments in response to the Notice or other data filed with the Commission, urged that the Commission take some action to allow them to compete for non-network programming that was denied to them because of the exclusivity provisions in contracts of television stations located some distance from them. UHF Station WAKR–TV at Akron is situated approximately 29 miles from Cleveland, Ohio. Summit submits two possible solutions that would revise the 25-mile standard, and still retain a general rule. The first alternative is to prohibit exclusivity against a station in another television market as set forth in the 1972 ARB Television Market Analysis. The second alternative is a rule that would retain a 25-mile standard, but only in the top 50 markets. These two solutions of Summit are vigorously opposed in the reply pleadings of AMST, RKO and WGN. The basis of the three oppositions is that the proposals are unrealistic and really amount to special legislation for a few "overshadowed" communities. On the other hand, ABC, in its opposition, is of the view that the 25-mile standard is probably too harsh, and submits that the alternatives proposed by Summit would assist in alleviating the "overshadowed" problem.

13. Other parties specifically commenting on the "overshadowed" market question include NAB, which states that it has no solution to the problem, but that the 35-mile standard of the specified zone adopted in the cable report, which was part of the NAB-NCTA consensus agreement, should be utilized. King and WJAC urge that the Commission adopt a case-by-case approach to resolve this "overshadowed" problem, with WJAC suggesting reference to transmitter locations of the competing stations. Storer, in general, reiterates its contention set forth in its comments in response to the notice that price is the main problem in the "overshadowed" market situation, i.e. "overshadowed" stations are simply not willing to pay the price at which a program is offered to stations serving all or a portion of the same market area. Similarly, Scripps-Howard intimates that the Akron station does not wish to pay the prevailing price for non-network programs, even though it does actively solicit advertising in competition with WEWS in the same market.

14. RKO, in its reply pleading points out that the Summit and Corvallis proposals are not feasible alternatives because they have not shown that those markets should be insulated from competition and reiterates the positions urged in its petition and opposition. AMST, also in its reply pleading, challenges a position taken by the Patchogue station that even a 35-mile standard could work to deny programming to many television stations near New York City; and, it also contends that the Summit and Corvallis proposals are not feasible as a general standard. WGN, in reply, contends the different alternatives of Suburban, Corvallis and Summit support its position that a general rule is unnecessary and unworkable.

15. Metromedia and RKO contend that the Commission is without authority to adopt rules limiting territorial exclusivity because it amounts to an unreasonable restriction on the business practices of broadcasters. RKO also contends that the rule is contrary to copyright and antitrust laws. Finally, King

contends that because of the vote on the First Report and Order (2 Commissioners voting for the document, with four Commissioners concurring in the result), the rule is procedurally defective.

16. Most of the parties contend that they never had an opportunity to comment on the modification of the exclusivity provided to television stations by the cable rules. As set forth above, the Commission, in part because of this contention, stayed the effective date of the rule.

17. As we stated in the notice of proposed rulemaking (FCC 68–511, 33 FR 7158) initiating this proceeding, the Commission had little specific information on the non-network program situation. The parties filing comments in opposition to the proposed rule supplied little factual data and their comments were very general in nature. The petitions for reconsideration are much more specific as to the multi-city market problem, and they recognize the "overshadowed" market situation as a very real one. Moreover, in these petitions, the parties had their first chance to comment on the revision of the exclusivity made available to television stations by the cable television rules. The petitions and responsive pleadings fully explore the foregoing issues and submit possible solutions to assist us in solving them.

18. We have considered all the pleadings filed concerning the First Report and Order and have concluded that the 25-mile standard should be modified. In the cable Report and Order (36 F.C.C. 2d 143 (1972)) which reflected the so-called consensus agreement, the rule permitted television stations to secure exclusivity against cable systems in other communities in hyphenated markets, as well as setting the 35-mile standard to be the specified zone of a television station. At the time that the 25-mile standard was adopted in this proceeding, we felt that the 25-mile distance would have little effect on syndicated distribution patterns, but that it might possibly open up the negotiations for programming for all stations including the so-called overshadowed stations. Moreover, there were no data on file with the Commission relating to exclusivity matters that were provided for in the cable rules as adopted in 1972. Because the date of the cable Report and Order was so much later than the closing date for filing comments in the geographical exclusivity portion of this proceeding, we, in effect, can consider the First Report and Order in this proceeding as having provided the first opportunity for the parties to comment on the possible reduction of the exclusivity for television stations provided by the cable rules in hyphenated markets.

19. We recognize that the Commission could adopt the case-by-case approach to resolve any problem situations involving abuses as to exclusivity in the syndicated programming area. However, because the process of resolution is so time consuming and because so many people will be engaged in the sales of such program fare, we believe a specific rule with limited exceptions is the most definite and prudent course of action. In addition, because the rules here adopted are intended to have a broad general applicability, it should not be assumed that any particular contract or exclusivity practice is necessarily reasonable and insulated from antitrust or other scrutiny simply because it does not violate the rules here adopted. These rules are intended only to establish some outer limits to the exclusivity practices in question. We think it likely, in fact, that even within the market lists (§ 76.51 and ARB) here relied on, that there are stations which, if purchasing exclusivity against each other, will be approaching the edge of what a full review of the circumstances might reveal to be "undue" exclusivity. U.S. v. Paramount Pictures, Inc., 66 F. Supp. 323, 70 F. Supp. 53 (S.D.N.Y., 1947), noted with approval by the Supreme Court, 334 U.S. 131 (1948). The same would, of course, hold with respect to the purchase of programming exclusivity against cable television system use. As noted in the Cable Television Report and Order, supra, footnote 54, "In some markets the designated communities are located so far apart that a sale in one does not and should not preclude a sale in the other." Although we had hoped in this proceeding to be in a position to further clarify which situations are involved, it appears that the variables are sufficiently numerous, including the geography, demography, terrain of the area as well as the characteristics of the particular stations involved, that we are now taking that step. That is, however, a matter which clearly warrants our continuing concern.

20. Even though there is still little, if any accumulated information on the operation of the cable rules, other than that contained in the comments, it may well have been premature to lower territorial exclusivity to the 25-mile standard as well as not to provide for exclusivity in the hyphenated market situations. Therefore, we shall modify the territorial exclusivity rule adopted in the First Report and Order of the present docket. We shall (a) raise the mileage standard in § 73.658(m) of the Commission's rules to 35 miles as determined by the reference points contained in § 76.53 [3] of the rules, except that for a two-year period, beginning with the effective date of this modification, television stations licensed to Cleveland, Ohio, may not secure exclusivity against a television station licensed to Akron, Ohio, and television stations licensed to Stockton, California, may not secure exclusivity against a television station licensed to Modesto, California, and (b) permit television stations in hyphenated markets to secure exclusivity against other television stations in the same hyphenated markets as contained in the listing of major television markets contained in § 76.51 of the Commission's rules (for the top 100 markets), and for markets below the top 100, the listing of markets contained in the ARB Television Market Analysis for the latest year at the time the contract, arrangement or understanding is complete under practices of the industry. In addition, Puerto Rico will be considered to be a single television market so that any TV station on the island may secure exclusivity against any other station there.

21. The reference points between Cleveland and Akron are approximately 29 miles apart, and the Modesto-Stockton reference points are approximately 27 miles apart. In their respective comments in this proceeding, they have submitted data concerning the impossibility of negotiating with the program suppliers, and they have also submitted data that some negotiations had tentatively resulted in the future delivery of programs, but that the contracts were later cancelled by the suppliers prior to actual delivery of the programs. As many parties have recognized in their petitions for reconsideration, there is a genuine concern by the Commission to "free up" program availability for "overshadowed" stations. A general rule would be preferable, if feasible. However, because of the exclusivity provided to television stations by the cable rules, a revised 35-mile general rule, with a limited exception, is here being adopted. The licensee of Akron UHF station WAKR–TV has always claimed that it operates its station for Akron and does not attempt to operate as another Cleveland television station, even though it has the technical facilities to provide service to Cleveland. The Modesto UHF station's programming appears to include substantial Spanish-language programming. Because of these unique situations in Akron and Modesto and their claimed frustrations at not being able to negotiate with program suppliers because of territorial exclusivity held by Cleveland and Stockton stations, respectively, we shall, for a two-year period, not permit the Cleveland, Ohio television stations to secure territorial exclusivity against WAKR–TV, Akron, Ohio, or permit the Stockton, California television station to secure exclusivity against KLOC–TV, Modesto, California.[4]

22. With this two-year exception, WAKR–TV and KLOC–TV will have the opportunity to negotiate for syndicated program fare. Each year on September 1, these two stations will be required to submit factual data concerning their negotiations and the results of such negotiations. Hopefully, with the data obtained we can take any needed appropriate action with respect to these two specific "overshadowed" situations and the general "overshadowed" market problem.

23. It is reiterated that the Commission still has little knowledge or data concerning program distribution patterns as

[3] As provided in § 76.53, if a community does not have a listed reference point, the coordinates of the location of the main post office will be used.

[4] The difficulties encountered by KLOC–TV in their program negotiations were contained in the comments filed September 26, 1968, prior to commencing Spanish language programming.

regard non-network syndicated programming. Still, at this time, we do not envision a requirement that such contracts should be filed with the Commission. To gain additional experience under the cable rules as they relate to syndicated program exclusivity, with the exception of the Akron and Modesto situations outlined above, we are adopting the modifications noted above. The special problems of Puerto Rico are discussed hereafter, whereby we are also creating a limited exception for that island.

24. Puerto Rico is contended to be unique, because of the fact that the language in general use is Spanish and for other reasons. It is contended by the Puerto Rican parties filing comments herein (WAPA, Ponce and Telemundo) that Puerto Rico, irrespective of distances, should be considered a single market. This is urged because the programming of the San Juan stations and the Ponce station are broadcast throughout the entire island by rebroadcast agreements, satellites, and translators. It is contended by all three parties that anything less than island-wide exclusivity would disrupt past patterns as well as inhibit the development of four diversified program "networks" (the "flagship" stations being the two San Juan stations, the San Juan-Caguas station, and the Ponce station). Because of the uniqueness of the television broadcast program situation in Puerto Rico, and because of the unanimity of the comments filed by competing stations, the island of Puerto Rico will be considered to be one market for the purposes of territorial exclusivity. (This action, however, is without prejudice to any decision to be made in Docket No. 19974, the proceeding concerning television assignments in the San Juan and Ponce, Puerto Rico area.)

25. The position of King concerning the alleged procedural defect resulting from the fact that only two Commissioners voted for the Report and Order, with a concurrence by 4 Commissioners, is not well taken. King cites no specific authority other than that the APA requires that "the agency shall incorporate in the rules adopted a concise general statement of their basis and purpose." 5 U.S.C. § 553(c), and § 1.425 of the Commission's rules require that the "Commission will * * * issue a decision incorporating its findings and a brief statement of the reasons therefor."

26. The First Report and Order did set forth a concise general statement of the basis and purpose for adoption of the 25-mile standard, i.e., to possibly open up negotiations for non-network programming for "overshadowed" television stations, especially the UHF stations. Two Commissioners voted for the Report and Order, which is the decision of the Commission. Four Commissioners concurred in the result which means that they voted for the rule, as adopted. However, for reasons of their own, they did not issue any concurring statements. The Commission's decision, we believe, met the requirements of section 553(c) of the Administrative Procedure Act and § 1.425 of Commission's rules.

27. Metromedia contends that the Commission is without authority to adopt a mileage exclusivity standard in non-network programs on the theory that, historically, under the Sanders case, the Commission does not have authority to regulate the business of the licensee, i.e., supervisory control of programs and business management or policy. RKO claims that the Commission has not reconciled the purpose of the mileage rule with the policies of the copyright and antitrust laws. In the First Report and Order, the Commission set forth its basis for the adoption of the rule. The rule was the Commission's opinion of a reasonable one that would enable certain television stations to bid for programming. The development of broadcast stations is in the public interest and all that the Commission is attempting to do is assist in this development. Upon the showing made in the petitions for reconsideration, for the reasons set forth above, the Commission believes that the rule should be less restrictive and is so modifying it. Since the rule is less restrictive than that originally adopted, it will apply to all contracts finalized on or after August 7, 1973 (the date of publication of the First Report and Order in the FEDERAL REGISTER), a requirement that is consistent with the orders of stay previously entered in this proceeding.

28. In view of the foregoing, *it is ordered*, That the petitions for reconsideration are granted to the extent indicated above and are denied in all other respects; and *it is further ordered* That pursuant to the authority contained in Sections 4(i), 303(g) and 307(b) of the Communications Act of 1934, as amended, and because the prior notice and effective date provisions of the Administrative Procedure Act (5 U.S.C. 553) are unnecessary, § 73.658(m) of the Commission's rules is modified, effective May 10, 1974, as set forth in the Appendix below.

29. *It is further ordered*, That the pleadings filed by Association of Independent Television Stations, Inc. and Paduch Newspapers, Inc. are dismissed.

(Secs. 4, 303, 307, 48 Stat., as amended, 1066, 1082, 1083 (47 U.S.C. 154, 303, 307))

Adopted: April 25, 1974.

Released: May 2, 1974.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] VINCENT J. MULLINS,
Secretary.

Part 73 of the Commission's Rules is amended as follows:

1. Section 73.658(m) is amended to read as follows:

§ 73.658 Affiliation agreements and network program practices; territorial exclusivity in non-network program arrangements.

* * * * *

(m) *Territorial exclusivity in non-network arrangements.* No television station shall enter into any contract, arrangement or understanding, express or implied, with a non-network program producer, distributor, or supplier, or other person which prevents or hinders another television station located in a community over 35 miles away, as determined by the reference points contained in § 76.53 of this chapter (if reference points for a community are not listed in § 76.53, the location of the main post office will be used) from broadcasting any program purchased by the former station from such non-network program producer, distributor, supplier, or other person, except that a television station may secure exclusivity against a television station licensed to another designated community in a hyphenated market specified in the market listing as contained in § 76.51 of this chapter for those 100 markets listed, and for markets not listed in § 76.51 of this chapter, the listing as contained in the ARB Television Market Analysis for the most recent year at the time that the exclusivity contract, arrangement or understanding is complete under practices of the industry. As used in this subsection, the term "community" is defined as the community specified in the instrument of authorization as the location of the station.

NOTE 1: Contracts, arrangements, or understanding that are complete under the practices of the industry prior to Augusts 7, 1973, will not be disturbed. Extensions or renewals of such agreements are not permitted because they would in effect be new agreements without competitive bidding. However, such agreements that were based on the broadcaster's advancing "seed money" for the production of a specific program or series that specify two time periods—a tryout period and period thereafter for general exhibiton—may be extended or renewed as contemplated in the basic agreement.

NOTE 2: For a two-year period beginning May 10, 1974, television stations licensed to Cleveland, Ohio, and Stockton, California, may not enter into any contract, arrangement or understanding, express or implied, with a non-network program producer, distributor, or supplier, or other person which prevents Station WAKR–TV, Akron, Ohio, and Station KLOC–TV, Modesto, California, respectively, from broadcasting programs purchased by those Cleveland, Ohio, and Stockton, California stations.

NOTE 3: It is intended that the top 100 major television markets listed in § 76.51 of this chapter shall be used for the purposes of this rule and that the listing of the top 100 television markets appearing in the ARB Television Market Analysis shall not be used. The reference in this rule to the listing of markets in the ARB Television Market Analysis refers to hyphenated markets below the top-100 markets contained in the ARB Television Market Analysis. If a community is listed in a hyphenated market in § 76.51 and is also listed in one of the markets in the ARB listing, the listing in § 76.51 shall govern.

NOTE 4: The provisions of this paragraph apply only to U.S. commercial television broadcast stations in the 50 states, and not to stations in Puerto Rico or the Virgin Islands, foreign stations or noncommercial educational television or "public" television stations (either by way of restrictions on their exclusivity or on exclusivity against them).

NOTE 5: New stations authorized in any community of a hyphenated market listed

in § 76.51 of this chapter or in any community of a hyphenated market listed in the ARB Television Market Analysis (for markets below the top-100 markets) are subject to the same rules as previously existing stations therein. New stations authorized in other communities are considered stations in separate markets unless and until § 76.51 is amended by Commission action, or the ARB listing is changed.

[FR Doc.74-10599 Filed 5-7-74;8:45 am]

[Docket No. 19622; FCC 74-458]

PART 73—RADIO BROADCAST SERVICES

Prime Time; Termination of Proceeding

In the matter of consideration of the operation of, and possible changes in, the prime time access rule (39 FR 12748) (§ 73.658(k) of the Commission's rules).

1. The Commission has before it the three timely-filed petitions seeking reconsideration of the Report and Order in the above-captioned proceeding, released February 6, 1974[1] which amended § 73.658(k) of the Commission's rules, the prime time access rule. In its previous form (in effect until September 1974) this rule limited the amount of network and off-network programming during prime time to three hours each evening, with certain specific exceptions for fast-breaking or on-the-spot news coverage and for political broadcasts by legally qualified candidates for public office. "Prime time" is defined as the 4-hour period between 7–11 p.m. e.t. and P.t., 6–10 p.m. c.t. and m.t.[2] The Commission amended the prime time access rule in the February 1974 action in essentially the following ways:

(a) There are no more restrictions on the programs which stations subject to the rule (network outlets in the top 50 markets) may carry during what has been the first half-hour of prime time (7–7:30 p.m. e.t. and P.t., 6–6:30 p.m. c.t. and m.t.).

(b) There is no restriction on the use of prime time on Sundays. It appears that CBS and NBC, at least, will use the full four hours of prime time on Sundays for network programs.

(c) The only remaining restrictions are tied to a definite time period Monday–Saturday, the period from 7:30 to 8 p.m. e.t. and P.t. (6:30–7 p.m. c.t. and m.t.). These six half-hours may not be used for network or off-network material, or feature film, except that one of them each week may be used for network or off-network programs of certain types—children's "special" programs, documentaries, or public affairs programs. CBS has announced plans for a series of children's "specials" Saturdays from 7:30 to 8 p.m. e.t., and NBC has plans to use the whole hour on most Saturdays, 7–8 p.m. e.t., for a news documentary program series. The ban on feature film from these periods is the subject of two of the three petitions for reconsideration.

(d) Certain other provisions were adopted concerning sports "runovers", time-zone difference problems, etc., which probably overall amount to some liberalization of the rule, although not very much in relation to the practice which developed under it with respect to waivers in such cases. These are discussed below in connection with the petition of Sandy Frank Program Sales, Inc.[3]

2. Petitions for reconsideration of this decision were timely filed on behalf of three parties—film producers and distributors MCA, Inc. (MCA) and United Artists Corporation (UA) which also filed a petition for stay, and Sandy Frank Program Sales, Inc. (Frank) a syndicator of first-run access-period programming. Frank also filed a petition to accept a petition of more than 25 pages (see § 1.106 (f) of the rules); this is granted and the petition is accepted.[4] In substance, UA and MCA seek reversal of the decision to bar feature films completely from the 7:30–8 p.m. access periods (MCA proposes that the ban should be at least lifted for one night a week). Frank strongly supports the rule in its previous form (plus the ban on feature film) and opposes the relaxations adopted; it also urges tightening up the application of the rule by denial of most waiver requests, and the adoption of an "anti-stripping" rule which would bar "multiple showings" of the same series material during the access periods of a given week.

3. In the interest of brevity, we do not repeat here the entire background and history of the rule, nor the reasons for the modifications recently adopted except as they directly pertain to the contentions of the petitioners and the opposing parties mentioned below.[5] In the following paragraphs there are set forth in summary the arguments of the petitioners, first UA and MCA and then Frank.

The MCA and United Artists Petitions Concerning Feature Films

4. These two parties, film producers and distributors, vigorously oppose the change in the rule which would bar completely "feature film" from the Monday–Saturday 7:30–8 PM (e.t.) half hours. Their arguments, which are much the same and are discussed together herein, are generally that this is an unwarranted restriction, which really in effect amounts to a "blackout" of non-network feature film entirely in prime time, as to stations subject to the rule, causing great harm to the independent motion picture production and distribution industry and the public, and meaning that the networks (not subject to such restrictions) will tend to be the only sources of prime time movies, so that their power and dominance will be increased rather than lessened. These parties also claim that the restriction is over-broad and violates important First Amendment and anti-censorship prohibitions.

5. *The asserted effect of the restriction.* It is claimed that, whereas the Commission regarded the recent changes as a relaxation of the rule, in this respect the change is an increased and unwarranted restriction, affecting not only the particular half-hour specified but also the whole of prime time and late afternoon "fringe" time. In our recent decision (par. 86) it was stated that while licensees would lose some flexibility as a result, with respect to the 7:30–8 PM period, they were gaining it as to the 7–7:30 half hour, and thus could still present movies in the early evening. These parties assert that this is meaningless; affiliated stations in substantial numbers simply cannot be expected to run movies during hours such as 5:30 or 6 to 7:30, at the expense of early local and network news, nor, probably, would the Commission be happy if they did. Weekend evenings do not present this exact problem to the same degree, but MCA asserts that these hours on weekends are and will be taken to an increasing extent by network programming—on Sundays regularly beginning at 7 PM e.t., on Saturdays beginning at the same time for NBC affiliates at least, and, for all networks, increasing time for sports and other "specials" in the late afternoon. As to the later portion of prime time, 8 PM e.t. and after, it is asserted that preemption of network programs to present local movies will not be significant, since, with all of the movie having to fall during network hours, this will mean 90 minutes or two hours out of three hours of network material on a given evening, more than most stations will consider preempting. MCA asserts that there has been a sharp drop in prime-time preemptions by top-50-market affiliated stations for local movies from 117 per month in March 1969 (7:30–11 p.m.) to 33 in November 1973

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[1] FCC 74-80, 44 FCC 2d 1081, 29 RR 2d 643, 39 FR 5585.

[2] The original rule was promulgated in May 1970 (23 FCC 2d 382), amended upon reconsideration in August 1970 (25 FCC 2d 318) and is in its currently effective form in § 73.658(k) of the Commission's rules.

[3] Although not embodied in the new rule, the decision (FCC 74-80, par. 88) set forth also the Commission's expectation that stations will devote an appropriate portion of the "cleared" time periods, or at least of total prime time, to material of particularly local significance—programs designed for children, material relating particularly to minority needs and problems, and other material particularly designed to meet the needs and problems of the station's community and service area as determined in its ascertainment efforts.

[4] Two other petitions for reconsideration were filed. One, by Screen Gems Division of Columbia Pictures Industries, Inc., has been withdrawn; the other, by Motion Picture Association of America, Inc., arrived at the Commission on March 20, two days after the closing date for petitions, and thus is late. Since the period for seeking reconsideration of a Commission action is statutory, it cannot be waived. However, this petition was later re-tendered as a statement in support of the MCA and UA petitions (its position is basically the same as theirs) and is considered and discussed below as such.

[5] For the history and background of the rule, see the Report and Order herein, FCC 74-80, pars. 4-25 (29 R.R. 645-656); see pars. 79-112, 44 FCC 2d 1132-1145, 29 R.R. 2d 695-709, as to the reasons for the changes made in the rule.

(8–11 p.m.), but see footnote 13, below. This is attributed not only to scheduling problems, but to the fact that much of the local and other non-network advertising support for prime-time programs has been absorbed under the rule by "access programming." UA asserts that late evening time on these stations is largely unavailable for movies because of the local news and late-evening network programs, so that the only time left on affiliated stations for syndicated motion pictures is often morning and early afternoon, when only small audiences are available.

6. Therefore, it is claimed, there will be virtually a "blackout" on use by individual affiliated stations of feature films during prime or "fringe" time, to the serious detriment of the public and the motion picture production and distribution industry. It is urged that the market for feature films sold in syndication will be substantially curtailed, since stations will not be seeking material for such use, and what demand by stations remains will be only at considerably lower prices, reflecting the smaller audiences available at the remaining times and thus the lesser advertising support which will be forthcoming. These parties state that the prime-time rule has already led to a decline in syndicated sales of feature film of about 12 percent between 1972 and 1973 (from $49.5 to 43.6 million)[6] and this trend will simply be increased by the new restriction. UA points out that syndication sales of feature film, though currently less than the sales of theatrical features to networks ($57 million in 1973), are very important to the motion picture production industry, being relied upon to recoup production costs; and the sharp reduction in such income will have a depressing effect on both the number and the quality of motion pictures produced. The bargaining position of motion picture producers will be impaired. Thus these companies—already suffering from the impact of a number of developments such as the general decline in theatrical receipts with the growth of television, and administrative restrictions such as the "anti-siphoning" restrictions on film use on pay cable and subscription television, as well as the prime time access rule—will be hurt even further under the new ban. MCA asserts that two of the companies, Columbia Pictures and MGM, already have substantial problems.

7. It is claimed that the public will also lose substantially, both from the unavailability of movies in prime time other than on a network basis—which means that 60 percent or more of the potential audience will not have seen a desirable movie even after two network runs—and from the lower quality and freshness of material available at other times, because of the general depression of the market and lower price levels referred to above. It is claimed that there will no longer be the healthy program production industry we have found in the past to be necessary for the continued functioning of both broadcast and cable television (see Cable Television Report and Order, 36 FCC 2d 141, 169–170 (1972)).

8. Another argument is that the weakening of the syndication market for feature films will simply increase network dominance, as the only prime-time market left for movies, as to which they will be unrestricted. It is urged that this is hardly consistent with the purpose of the prime-time rule. MCA argues that the networks will simply take more of the available product and keep it for a longer time, rather than being limited to a period such as two runs which is the basis on which MCA now seeks to sell to its Network customers.

9. *The legality and propriety of the total restriction.* Both of these parties, particularly UA, urge that this total ban on use of features during the access period is unconstitutional as an over-broad restriction violative of the First Amendment, is illegal censorship, and interference with licensee judgment in programming, and improperly discriminates against feature films and their producers and distributors, in favor of other material and suppliers such as game shows and their producers, who are not subject to restrictions under the rule. UA claims that both sets of producers and sellers are equally "independent" and should be similarly treated; any Commission action to the contrary, based on its idea of what is "good for the public", is illegal and beyond its power.

10. The argument essentially is that the total ban on feature film during access periods is a restraint on First Amendment rights—freedom of speech and expression, on the right of stations to present, and viewers to have available, certain kinds of programs at certain times—and thus sustainable only when justified by a compelling need rather than mere "public benefit", and only if it is sufficiently narrow to be fully justified by that need.[7] It is claimed that the restriction fails completely to meet these standards; from the standpoint of providing more diversity of programming and curbing network control and monopoly, the new rule not only does not meet a compelling need or even provide a public benefit, but is counter-productive, lessening diversity and increasing network dominance. It is contended that this is clearly censorship, whatever the Commission may say about it—telling stations what they may and may not show, and viewers what they may or may not watch, particularly objectionable in that feature films are very popular with viewers. UA claims that the small amount of time involved, a half-hour, is no answer to this argument, because the effect goes far beyond that, in practice embracing all of prime time and late afternoon time as well. Moreover, it is urged, the idea of permitting some material during hours of small audience but banning it from high viewing periods is itself a violation of freedom of speech, like an ordinance limiting political speeches in the town square to hours when no one is likely to be on the street. Such an approach is also objectionable in that it limits the production of material by barring it from profitable hours.

11. These parties agree that the restrictions on feature films adopted in the original rule, and later modified and clarified in some respects, are artificial and not to be desired; but UA asserts that this is no reason to adopt an approach removing them but substituting "total injustice". It is claimed that rather, the earlier restrictions should be removed and the whole subject left to the free operation of the market place.

12. UA claims that the feature film ban should be repealed entirely; MCA suggests the approach of permitting them during one of the cleared access half-hours each week. This, it is said, would give licensees more flexibility and freedom to exercise their programming responsibilities, would make desirable material (locally originated movies) available to the viewing public, who may not have been able to see them otherwise (if they were not on a network or viewers missed the network showings), provide a vital source of revenue for the motion picture production industry, and encourage preemption of network programs (e.g. the hour from 8 to 9 p.m. if the movies start at 7:30).

The Sandy Frank Petition for Reconsideration

13. Sandy Frank is a syndicator of access-period programs, doing business under various corporate names, who has benefitted considerably from the prime time rule in the form it has had until our recent amendments, and who vigorously opposes the changes made. His lengthy

[6] These figures represent syndicated sales of theatrical features and short subjects to all stations. MCA estimates that 95 percent of this represents sales of features, and 70 percent of it is sales to top-50-market stations (apparently including independents as well as affiliates).

[7] The following authorities are cited by MCA, UA, or both: Mount Mansfield Television, Inc. v. FCC, 442 F. 2d 470 (C.A. 1971) in which the prime time rule was affirmed against this line of attack as well as others; UA contends this was probably wrong and certainly so in light of experience under the rule, and in event the restrictions involved there did not go this far; National Broadcasting Co., Inc. v. U.S. 319 U.S. 190 (1943), affirming the Commission's network regulations but emphasizing the concept of licensee and viewer freedom, rather than restrictions; Associated Press v. U.S., 326 U.S. 1 (1945); Red Lion Broadcasting Co., Inc. v. FCC, 395 U.S. 367; U.S. v. Midwest Video Corp., 406 U.S. 649 (1972), noting Chief Justice Burger's concurring statement that the Commission's rules requiring cable program origination strains the outer limit of the Commission's powers; Joseph Burstyn, Inc. v. Wilson, 343 U.S. 495 (1952), holding that motion pictures fall within the protection of the First Amendment; Banzhaf v. FCC, 405 F. 2d 1082 (C.A.D.C. 1968); Brandywine Main Line Radio, Inc. v. FCC, 473 F. 2d 16 (C.A.D.C. 1972) (dissenting opinion of Bazelon, C.J.); and the dissenting opinion of Mr. Justice Black in Scales v. U.S., 367 U.S. 203 (1961), to the effect that where First Amendment restraints are involved, mere "public benefit" is not sufficient justification.

petition for reconsideration, accompanied by a lengthy personal statement, asserts that the changes curtailing the amount of cleared access-period time will have a catastrophic impact on him and other independent producers who answered the Commission's call to produce first-run non-network programming, by sharply reducing the number of time slots which will be available for their material. It is also urged that the Commission should tighten up in administration of the rule, granting no waivers except in established situations such as sports runovers (and particularly no waivers for "off-network" material) and also that we adopt what is in effect an "anti-stripping" rule, barring exposure of material from the same program series more than once a week during the access period.[8] Frank states that he did not participate earlier in this proceeding because of limited resources and fear of reprisal from opposing major interests (though his position was informally presented to the Commission); but now, with the survival of his and other independent production and syndication entities seriously jeopardized by the rule changes made, he is coming forward (it is stated that only the really large units in the business are at all likely to survive).

14. The petition first outlines what are called "first principles", or the original purposes of the prime time access rule, which are said to be: to decrease network domination of television broadcasting; to provide opportunity for the development of new, diverse and independent program sources; and to reestablish conditions under which licensees can, to a substantial extent, exercise their responsibilities as trustees, meeting the needs and interests of their communities and service areas, as contemplated by the Communications Act.[9] By the rule, licensees are freed from the very real compulsion of having to clear network programs every night from 7:30 to 8, and from the economic temptation to present inexpensive off-network material from 7 to 7:30, and can use their own judgment as to what the public interest requires in their areas. It is asserted that the rule was adopted after years of study, to reverse a trend toward increased network dominance in such developments as increased use of prime time (3 to 3½ hours) and expansion into many non-prime hours, and increased control over their own schedules starting in the late 1950's as advertiser-licensed programs sharply decreased in number.[10] Certainly, nothing has changed since 1970 to make these considerations less important; and the original rule and its concept of 42 cleared half-hours should have been left as it was (except for stripping and waivers, assertedly the rule has worked, and there is no warrant for reversing it by reducing "cleared" time by 64 percent or more).

15. Mr. Frank states that the Commission concedes in the Report and Order (pars. 82, 85, 89) that the rule as it was did not have a full or sufficient test, but nonetheless has acted drastically to reduce the number of "cleared" access periods, without any justification except, apparently, a view that this might mean "better" programming, a judgment which is both premature and basically improper anyhow (since the Commission cannot properly get into this area and specifically, and wisely, eschewed it in adopting the rule in 1970). He argues that the 42 half-hours adopted in 1970 themselves represented a reduction from the "50–50" rule originally proposed in 1965, and certainly should not be cut further, since the remaining half-hours (no more than 15) are simply not enough to support a viable, broadly based syndication industry, which needs a large number of placement opportunities if it is to function properly. Therefore the Commission should return to the rule, and not act to jeopardize the continued existence of entities it encouraged to come into the business. The small amount of time is particularly bad because the Commission apparently relies on it also to fulfill other objectives such as children's programs and material of particular local significance—all will be short-changed.

16. It is urged that the three main areas of reduction are all unjustified, based on erroneous conclusions. As to removal of all restrictions on the present half-hour (7–7:30), Frank contends that the Commission is taking a negative and self-defeating view in refusing to get into a contest between off-network material and stripped game shows; the appropriate remedy is to ban stripping or "multiple exposure" as discussed below. It is asserted that better programming will be forthcoming as producers and syndicators get money (profits from current successes) to start producing it, and that the same objectives—limiting network control directly and through use of "off-network" product—apply in this respect as much as ever. Mr. Frank claims that permitting off-network product during this period will also work to the disadvantage of local and network newscasts, which the Commission apparently favors, by beating them in the ratings. The added time permitted for network programming—both on Sundays and the hours for children's or news-documentary-public-affairs material—is said to be completely unwarranted, in the absence of a full test and the continued existence of the "network dominance" problem. It is said that if producers and syndicators can continue to have the previous amount of time available, they will be able, from their profits, to present better material (Frank mentions plans for sports programs and children's specials). This potential will be lost with the rule changes made. To the extent that "good" programming is advanced as the justification for increased network hours other than Sundays, such as the NBC and CBS proposed Saturday scheduling, the networks still have 126 half-hours a week of their own prime time, some of which can and should be expected to be used for such purposes. Mr. Frank states that he has plans for programming of these types, if permitted to continue under the 1970 rule. The possibility of "plowing back" profits from successful access-period programs, into more ambitious undertakings, is emphasized.

17. Mr. Frank supports the total ban on feature film during the access period as adopted, as an appropriate effort to clear these hours for new material; and, to increase still further the possibility of access by as many different programs and sources as possible, he would adopt an "anti-multiple exposure" rule, providing that except for local news and public affairs, stations may not present "multiple exposures of the same program series in access time during the same week." This would bar "stripping" of game shows such as To Tell the Truth and Truth or Consequences, and also the twice-weekly presentation of other game shows such as Hollywood Squares and Let's Make a Deal. The argument is that this will increase program diversity and also provide access for many more individual program series. For example, during the 6:30–7 PM (c.t.) period in Memphis, all three stations strip game shows Monday–Friday, meaning three programs, whereas ideally there should be 15. Even in a more typical market such as Detroit, there are now only 10 individual programs during this half-hour (one stripped, Hollywood Squares twice, and 8 once), which will be only 9 this coming year and Let's Make a Deal is also presented twice. Thus, many more producers will be able to share in purchases by stations; it is said that each half-hour weekly program series is worth about $75,000 for 52 weeks in this market, or $1,125,000 for 15 programs which should be presented. Mr. Frank also asserts another possible consequence of our rule changes: if stations may freely strip off-network material during the 7–7:30 period, they may well do so and move their present stripped game shows to 7:30, reducing the number of separate programs still further. It is claimed that his change will prevent licensees from "taking the easy way out", and will result in greater program choice and more opportunity for independent program suppliers, who can raise their prices as individual programs become more popular and stations can pay more; competition will then force the individual program producers to spend more on

[8] Except for the last "anti-stripping" point, much of the Frank petition is similar to the earlier arguments of parties such as NAITPD.

[9] Frank recognizes that the networking system has produced some good results, but claims that U.S. broadcasting is intended to be a system of individual licensees meeting local needs and interests, not a centralized, monolithic system producing tightly controlled national programming through the network "funnel", with the conformity and standardization which that is likely to entail.

[10] For a discussion of the background of this matter, see Report and Order, pars. 4–25.

their material, and better programming will result.

18. Mr. Frank also urges that "administrative problems" do not justify the changes made; rather, the Commission should dispose of them by tightening up the administration of the rule. It is asserted that only in a few situations are waivers warranted (sports runovers and possibly a few other); certainly never in the "off-network" situations. In these cases, it is claimed, the suppliers of programs such as National Geographic have already had the benefit of one network run, and the access period should be preserved for the benefit of those who answered the Commision's call. If a licensee believes such a program deserves further prime-time exposure, he may, and should be required to, preempt network programs for it. The same is true of children's "special" programs, network or off-network; a 7:30 starting time may be desirable, but it is not sufficient justification for shattering the rule. Otherwise, Mr. Frank does not object to waivers or a rule to accomodate occasional sports runovers (provided the events are reasonably scheduled so as to end by 7 PM e.t. as the changed rule provides), the "political broadcast" or "on-the-spot" news coverage exemptions which have been slightly broadened in the changed rule, or the provisions for pregame shows and "Summer Olympic" situations contained in the new rule (each network is allowed five pre-game shows per year, and an exemption is shows per year, and a n exemption is granted for them to use the 7:30 period on nights when they devote all of their three hours of prime time to an international sports event or other "special" programming except movies). However, there is objection to the provision of the changed rule (§ 73.658(k)(2)(ii)) which deals with time-zone-difference situations where simultaneous network programming is involved and where the rule would simply be waived as to Mountain and Pacific time zone stations in these situations. Mr. Frank maintains that such stations should be required to clear access time after the sports event if it preempts access periods in the early evening.

19. Mr. Frank's personal statement, attached to his petition, contains allegations about the syndication business and the impact of the changes. It is stated that NBC's station in Chicago would have taken Treasure Hunt for this coming year but did not do so when the rule was revised, and ABC's Detroit station bought Name That Tune instead of renewing Treasure Hunt, whereas it would have taken both under the present rule; these two developments mean a loss of nearly $200,000 for a year, and overall the loss is at least $500,000. (Frank's revenues were $1.3 million in 1973–74 and will be the same this year if the rule is changed, but would be $1.6 million with the old rule in effect, meaning a breakeven instead of a $300,000 profit, and no money for development of new programs compared to $100,000 if the rule remains the same). It is claimed that under the new rule there will be, at most, 15 access half-hours per market per week (7:30–8 Monday-Friday), with some 14 programs fighting for these (11 established programs including Treasure Hunt, plus 3 others such as New Candid Camera, Name That Tune, and Salty, a children's show). Since two of these are game shows shown twice a week, right there there is more demand than there are half-hours, and this does not include numerous other popular programs (Concentration, Sale of the Century, Dealer's Choice, etc.) or the amount of the access time which is expected to be used for station's local efforts. In short, the situation will be a disaster and particularly bad for Frank's Name That Tune show, which uses 10 live musicians and is relatively expensive to produce, and whose revenue may be cut from $2.5 million to $1.5 million. Mr. Frank states that he needs to market two successful shows to stay profitable. It is said that the shortage of time for these programs will certainly mean the end of production and development of other kinds of programs only marginally profitable, such as children's programs, sports, documentaries, off-beat entertainment, and "High School Quiz Bowl" programs. It is urged that at least the new rule should be stayed for a year, to give such entities a chance to adjust and avoid irreparable injury.

MATERIAL IN RESPONSE TO PETITIONS

20. Seven pleadings responsive to the above petitions for reconsideration were filed, including six oppositions and one statement (by the Motion Picture Association of America, Inc. (MPAA)) supporting the film producers' petitions. Of the six, three (ABC, Time-Life Films, and the Association of Independent TV Stations, Inc. (INTV)) oppose the film producers' petition; four oppose the Sandy Frank petition entirely or in part (ABC, CBS, NBC, and MCA-Screen Gems in a joint opposition).

21. *Oppositions to the MCA and UA petitions.* The main lines of argument urged against the MCA and UA petitions are: (1) the restriction is not censorship, as claimed, since the rule does not bar feature films from television or attempt to control their content but only relates to one small part of the day and not even that as to independent stations which operate in some 36 of the top 50 markets; and, in any event, this was settled by the 1971 Mount Mansfield decision sustaining the earlier rule including a not greatly different restriction, and any argument along this line would of course apply to much more than feature film; (2) to change the rule in this respect now would be the upset the delicate balance reached over-all, depriving independent producers of access time to which they are clearly entitled and requiring another look at the whole question (Time-Life claims that we would have to increase the number of access half-hours accordingly); (3) the "majors" are not really hurt by this change, which is not a significant departure from the previous rule, but actually have benefitted from the recent course of television programming and regulatory developments, including our actions[11]; and (4) the total restriction on network-affiliated stations will work to the benefit of independents in the same markets (and UHF stations), in making desirable feature film more readily available to them and restricting its use by their powerful affiliate competitors.

22. *Oppositions to the Sandy Frank petition.* ABC's opposition to the Frank petition is simply that of "administrative finality", the desirability of getting the prime-time-access question settled. It urges that the recent decision represents a reasonable balance and compromise, and should be affirmed. NBC's opposition (which does not include the "anti-stripping" proposal) is for similar reasons—reliance on the rules adopted by parties planning for this coming season, including NBC's rescheduling of its Sunday evening programming, with longer movies, and ABC points out that the ban is now total as to 6 half-hours a week, but before covered 7 hours as to much feature film. It asserts that the majors have benefitted greatly from the "syndication and financial interest" rules adopted in 1970, and from increased use of movies by the networks (it is stated that 69 percent of ABC's 1972 expenditures for prime-time programming went to major film companies). It is stated that they also benefit from the recent rule revisions in having somewhat more network time for their pictures and the relaxation of the "off-network" restrictions as to 7–7:30, permitting them to sell more readily their extensive holdings. ABC makes the same argument advanced last year to the effect that the majors are not really doing badly and some, such as MCA, extremely well. Time-Life argues that UA's request is groundless; and that one day simply is not important enough to make much difference, certainly not with respect to the matter of "network dominance." If the majors are slightly disadvantaged vis-a-vis the networks, this is of little consequence compared to the benefit to independent producers.

23. The MCA-Screen Gems petition is similar to MCA's lengthy comments in the proceeding: that the Commission must (as it has done) look at the results of the rule in terms of the general programming flowing from it, including such matters as a great concentration of time on game shows (particularly stripped programs), and increased use of foreign product. These results well justify the reduction represented by the decision. In any event, the reduction is nothing like as much as is claimed; game shows, of high and established popularity, may still be expected to have a prominent place in the 7–7:30 program picture on stations subject to the rule, but maintenance of that period as a "competition-free haven" for such material cannot be justified. It is claimed that what Frank is

asking is freedom from having to compete with his fellow independent sources; the new rule itself restricts nothing. MCA–SG also oppose the anti-stripping proposal, particularly as to independents but also as to network affiliates; it is claimed that this acts to curtail the "after-market" for off-network material, particularly important to MCA and other network suppliers because the network production itself usually represents a loss.

24. *The Motion Picture Association statement.* MPAA is an association of 9 producers and distributors of feature-length motion pictures (including MCA-Universal, UA, Columbia Pictures Industries, MGM, Paramount, 20th Century-Fox, and Warner Bros., who have participated in this proceeding). The statement supports the MCA and UA contention that the total ban on feature films is inappropriate and unconstitutional, not related to any legitimate governmental objective and certainly overbroad. The same arguments mentioned above, concerning the effect on far more than the half-hour specifically mentioned, are urged, as is the importance of television to theatrical film production. It is claimed that a great number of independent producers are harmed; of 468 films submitted for rating in 1972, 158 were distributed by MPAA members, but 126 of these were actually produced by independents. A total of 118 pictures were submitted by companies having only one or two features for submission that year. It is asserted that motion pictures are a tremendously important art form, subject to protection like all art forms. Numerous Supreme Court and other decisions are cited.

SANDY FRANK REPLY TO OPPOSITIONS

25. Sandy Frank filed a lengthy reply to the four oppositions to his petition, accompanied by a petition for leave to file a pleading of over 10 pages, which is granted. Initially, it is urged that the opponents of Frank's position are the powerful interests—the networks and the "majors"—not including any non-network station licensees or any other program producers. For the most part, the rest of Frank's reply is devoted to argument with the four opposing parties, to the extent they disagree with, or do not support, its position. As to ABC, Frank expresses distress and incomprehension as to ABC's departure from its earlier position fully supporting the rule; as to NBC, and its argument concerning reliance on the Commission's decision modifying the rule, it is stated that this ignores the dependence by Frank and other independent entities on a continuation of the rule, and that certainty and time are needed by parties of one sort just as by those of another. As to CBS, Frank's chief controversy generally is the alleged failure to answer all of Frank's arguments or to carry arguments to their logical conclusion; for example, CBS has opposed Commission involvement in program evaluation but does not oppose a decision based largely on such evaluation, and it refuses to concede that the Commission was arbitrary in modifying the rule even though admitting that it has not had a full and sufficient test. Frank also claims that CBS' reference to the rule as "fencing out competition" ignores the great tendency for stations to clear network programs, which independent producers simply cannot be expected to compete with.

26. With respect to the MCA–SG petition, Frank argues with its characterization of the rule adopted in 1970 as "experimental", with the assessment of the time impact of the modifications, and with use of "programming" as a basis of decision, particularly since this was not one of the objectives of the rule to begin with. It is also claimed that it is effrontery for these parties to talk of the "competition-free haven" created by the rule, when independent producers simply cannot be expected to compete with the pressure to clear network programs or the availability of popular and cheaper off-network material. Frank claims that the opposition to its "anti-stripping" proposal, which would open time to more producers and increase diversity for viewers, is simply designed to preserve the "after-market" for off-network material, without any showing as to why the access period is needed for this. It is also urged that the Commission should rely on the assurances of Frank, Time-Life, etc., as to future programming, and that profits from present successes will be plowed back into more ambitious efforts. In conclusion, it is said that we should not act to continue the dominance of the networks and an endless cycle of off-network reruns, but that we should go back to the pro-competitive basis of the 1970 decision.

DISCUSSION AND CONCLUSIONS

27. Upon careful consideration of the foregoing matters, we are of the view that all three of the foregoing petitions must be denied, and the rule as adopted in our January–February decision (FCC 74–80) affirmed, including retention of the bar against use of feature film during the access periods, but of course not including the "anti-stripping" provision requested by Sandy Frank. Our reasons are set forth in the next several paragraphs, first as to the film company petitions and then as to the Sandy Frank petition.

28. *The MCA and UA petitions.* With respect to the argument that the "total ban" on use of feature film during access periods constitutes an over-broad restraint on freedom of expression, or illegal censorship, we simply do not agree with this argument for a number of reasons. First, we agree with ABC and other parties that this question has been settled, as far as this proceeding is concerned, by the Mount Mansfield decision of 1971 affirming the prime-time access rule (Mount Mansfield Television, Inc. v. FCC, 442 F. 2d 470, 478 (C.A. 2, 1971)). It is true that the restrictions in the rule adopted and later modified in 1970 did not bar all feature film as does the new provision, but, as ABC points out, it applied to a substantially larger amount of time, 7 hours per week as opposed to six half-hours.[12] Therefore we regard the holding in that case as determinative of the issue here. Second, the new rule does not operate to bar feature film from television or from valuable prime time, or sharply to limit its usage. The incidence of movies on television has been quite large for many years, and, in particular, has increased in the last decade as to network carriage of movies during prime time. For the week of April 7–13, 1974, according to TV Guide, the 9 stations in Washington, D.C. and Baltimore markets (6 affiliates and 3 independents) showed a total of 118 movies, 8 in the morning, 39 in afternoon or early evening, 33 in prime time, and 38 late evening (after 11 p.m.). Of the 33 prime time movies, 20 were on affiliated stations, 19 being network programs and one a local preemption. Of the 38 late evening movies, 29 were local (8 on affiliates, 21 on independents), and 9 were network. There are independent stations, not subject to the rule, in at least 36 of the top 50 markets for 1974–75, totaling, according to ABC, 83 percent of the TV homes in the areas of dominant influence of top-50-market stations. Thus, there is no reason to expect a serious curtailment of movie showing on television, either generally or as to prime or late-evening time.

29. As mentioned in the Report and Order (par. 87 and Appendix C), the presentation on large-market affiliated stations of movies during the periods which will be "lost" under the rule changes, 7:30–8 e.t. Monday-Saturday, 10:30–11 Sunday, is currently not great, amounting in November 1973 to some 32 movies a week on 18 stations (three stations "stripping" them 5 or 6 nights a week, one showing them two nights, and 14 on one night). Thus, at most only a fairly small change in practice will result from the modification of the rule. It does not appear that this will be anything like the total "blackout" envisaged by MCA and UA, since a number of stations may be expected to continue their present practice of preempting network programs to show local movies starting at 8 p.m. E.T. or after, and some may present movies ending at 7:30, as ABC's two West

[12] The 1970 restriction applied to all "cleared" prime time, one hour per night. The rule originally adopted in May 1970 barred from this hour all off-network programs part of a regular series, and feature films which had been previously shown, at any time, by a station in the market. The August 1970 revision modified these provisions to specify off-network programs (without limitation) and feature films shown by a station in the market within the past two years. Because of an ambiguity as to whether a movie shown on a network would be an "off-network program" or a "feature film" for this purpose, a Commission Public Notice of November 1972 stated that, pending decision in Docket 19622, stations might show any movie which had not been presented on a station in the market within the past two years.

Coast stations did Monday-Friday in 1970 before the rule (with the effectiveness of the rule in 1971, they changed to a 6:30–8 schedule).

30. MCA mentions a sharp decline in local prime-time movie presentations by large-market affiliated stations, from 117 to 33 a month. To the extent that this is true in fact (see footnote 13), it does not appear to stem entirely, or chiefly, from restrictions on certain time periods.[12] MCA itself mentions one other factor, the channeling of local and other non-network advertising support into access-period programs as a result of the rule, so there is less of it available for prime-time local movies and therefore less incentive to stations to preempt network programs for this purpose. Other factors not mentioned could be the continuing increase in network prime-time movie presentations (to which individual stations see no reason to add their own programming efforts), the somewhat lessened number of theatrical feature films produced in at least some recent years, and the fact that a fairly high percentage of the latter are not regarded as suitable for television use, particularly early in the evening (see Report and Order par. 48, concerning the comments of WTIC–TV, Hartford, as to the small amount of "suitable" material, especially of suitable material which has not been on a network before it reaches syndication). These factors, of course, will continue to operate regardless of the changes in the rule recently adopted.

31. Thus, in our judgment, the feature film restriction adopted cannot be viewed as either illegal censorship or a restriction on freedom of expression, or a source of serious impact to the motion-picture production and distribution industry. It is also claimed by these parties, as it was earlier in this and other connections, that the rule change tends to increase network dominance, by making the prime-time showing of feature films take place largely if not entirely through network exhibition. We regard this as too speculative to afford a basis for changing our decision in this respect, for reasons mentioned above including the fact that it does not appear that the claimed "blackout" will materialize. Certainly, this aspect of the matter does not equal in importance the preservation of a substantial number of access periods for new non-network programs designed specifically for television. Our Docket 19622 action cut down the number of "cleared" time periods reserved for such material, and we regard it as important as to those remaining, to keep them free from the impingement which feature film usage would represent.

32. MCA and UA accuse us of discriminating among programs and types of production activities and entities, barring feature film but encouraging other material, whereas, it is claimed, the producers and distributors in both cases ae equally "independent". This argument misses the point. We assume that the "majors" and other motion picture entities are not connected with networks, and here they are regarded as "independent" just as are the producers and syndicators of first-run non-network material. As MPAA points out, many of the producers are fairly small organizations. But—and this is the basis for the distinction—the material involved here is not specifically produced for, nor does it rely entirely for exposure on, syndicated television sale. There has not been, so far, "made for TV syndication" feature film. Motion pictures either get exhibition first via theatre showing, and then go to television (either via network or via syndication) or they are "made for television", initially produced for and shown on network television. Thus, while we recognize the importance of TV exposure in the economics of much theatrical film production, this medium is not the only, nor generally the first, way these programs reach the public. In this important respect, feature films are different from first-run non-network material, which depends on TV syndication sale to individual stations for its exposure, and, as far as important prime time exposure is concerned, largely on access to the "cleared" half hours. Thus, the need for making "cleared" time available to the latter material is considerably stronger and more pressing than is the need for time for feature films. The latter, of course, also often have the network route available to them.

33. Therefore, in light of these considerations, we find that the rule must be retained as amended in our recent decision (FCC 74–80), taking into account all of the other opportunities for the presentation of feature film on television—via network, local preemptions during "network" prime time, at other hours, or at any time on independent stations in most of the top 50 markets—the somewhat added flexibility given in this respect by the removal of all restrictions from the 7–7:30 period, and the importance of preserving substantial amounts of time for the development of new non-network material made specifically for television. We reach this conclusion even as to the MCA proposal, which would remove the feature-film bar from one of the "cleared" periods each week, since that could represent a reduction of roughly 20 percent in the time available for first-run syndicated or local material.[14]

34. *The Sandy Frank petition seeking reversal of changes made.*[15] As discussed at length above, the Frank petition for reconsideration is a broad-gauged attack on our January changes relaxing the rule, particularly in reduction of the time reserved for programming which is neither network nor off-network (first syndicated and local).

35. In evaluating Frank's contentions, two things must be borne in mind. First, as pointed out in paragraph 91 of the Report and Order, the rule is a restraint. The Frank petition quarrels with our characterization of it as such (thus assertedly putting it in the same class as the "restraint" resulting from the compulsion to clear network programs); but the Court in the Mount Mansfield decision used the same characterization, although it found the restraints involved in the rule to be justifiable (Mount Mansfield Television, Inc. v. FCC, 442 U.S. 470, 478), referring to the "very real restraint" which the rule may involve. The restraining effects are obvious: a restraint on the networks in offering more than a certain amount of prime-time programming each week (4 hours less than before); and perhaps more significantly, a restraint on the activities of those producers who prefer to use the network route (such as more than 100 producers who joined as members of the National Committee on Independent Television Producers); a restraint on licensees in their ability to present more network programs if they were available and, of course, on their ability to present off-network programs and, to some extent, feature film (matters where there is generally no network "pressure" such as that assertedly used by the networks to secure clearance of current network programs); and, of course and most important, a restraint on the public's ability to watch programming (some of it quite popular) in these categories and from these sources, during the hours involved.

36. The second point is one urged by a number of opponents of the rule in earlier comments—what is sought by entities such as the NAITPD, and now Sandy Frank, is not only "access" or "opportunity" but exclusive access and opportunity or, in a sense, "freedom

[12] MCA's figure of 33 per month appears to be a considerable understatement according to our staff's study of ARB program listings for the October-November 1973 rating period (4 weeks). For example, MCA shows only one for Philadelphia in November 1973, whereas the staff's analysis of ARB data shows 4 (all by the NBC station). According to the staff's study, during this 4-week period affiliated stations in the top-50-markets presented some 190 local movies wholly or partly between the hours of 7 and 11 (e.t. and P.t., or 6–10 c.t. and m.t.). Of these, 76 started on weekdays after 8 p.m. e.t. (or were entirely between 7:30 and 10:30 on Sundays), so that they would not be affected by the rule change. Ninety-two involved time within the Monday-Saturday 7:30 access periods and thus would be precluded by the new rule on their present basis; and another 22 would not be precluded by the new rule as such but might be affected by increased network hours on Sunday or (on one NBC station) early Saturday evening.

[14] One possible approach, though not that proposed by MCA, might be to permit feature film to be used in one of the access periods if the station "cleared" an additional half-hour the same week after 8 p.m. so as to compensate. However, this might have a slight impact on the availability of time to new non-network programming (stations could count, toward compliance, a later half-hour which they would clear anyhow), and would not be consistent with the certainty which we found desirable in adopting our rule changes.

[15] Since we conclude below that the Sandy Frank "anti-stripping" proposal should not be adopted, the discussion here assumes the present situation in that respect.

from competition", for programming of certain categories as to origin and auspices, to the exclusion of programming different in these respects. In this connection, TV programming may be divided into five general classes: locally produced by or under the auspices of the station; "produced for syndication"; network programming; former network or "off-network" programs; and feature film. The first two classes remain under the rule (as originally adopted and now) in the position they have always had—no Commission restriction on their access to prime time or any other time. The rule as adopted in 1970 barred, generally, material in the third and fourth classes from 7 hours a week, to preserve it for the first two, particularly the second. The fifth category, feature film, was somewhat restricted by the 1970 rule, although it also gained to some extent from the reduction in use of the third and fourth classes.

37. It is virtually hornbook law that no governmental restraint of this character is legal or appropriate except if and to the extent that it can be justified by a significant public benefit. This is certainly true as to the first point, the restraint, as shown by the cases cited by MCA, UA and MPAA in their filings herein. It appears to be equally true as to the second—exclusivity—if anything approaching an "equal protection of the laws" concept is to be maintained. The significant benefit mentioned need not be immediate, and probably it need not be entirely tangible or quantifiable (e.g., as with multiple-ownership restrictions); but it must be substantial and, if not immediate, probable or quite likely to occur; and it must be public.

38. In reaching our decision in Docket 19622, we examined the record of developments under the rule, to see if they justified these restraints and grants of exclusive access fully, and we concluded that they did not. In paragraph 92 of the Report and Order, we pointed out some aspects of the programming which had resulted, chiefly the following: increased "stripping" of material, particularly during the 7:30–8 e.t. period when there had been none before; the greatly increased use of foreign produced material (which can hardly be held to be a favorable result of a rule designed to further U.S. independent program production activity); and the concentration on game shows, not so much as such as because they are for the most part stripped material or "sixth episodes" (now 6th and 7th episodes in two cases) of material produced for daytime network stripping. We concluded (par. 91): "we do not believe the record is such as to warrant the complete restraint on network and off-network programs which the present rule provides."

Elsewhere in the decision, we called attention to other results which appeared undesirable, including the fact that desirable network children's "specials" had to run after 8 PM as the rule worked out in practice, and the decline of news-documentary or public affairs, and other documentary material in prime time. (par. 83, 101). In light of this record, we concluded that complete retention of the restraints represented by the 1970 rule could not be justified, and we modified it accordingly, permitting a relatively small increase in network programs generally, another increase in network (or off-network) time if devoted to the types of programs mentioned above, and the removal of all restrictions on the 7–7:30 period, as unwarranted. We adhere to these views.[16]

39. Frank also urges strongly that we should not have made any changes cutting back the amount of "cleared" time in light of our conclusion that the rule had not yet had a full and sufficient test. This is a misleading interpretation of our decision. As CBS points out, these statements were made largely in response to arguments of vigorous opponents of the rule, such as MCA and other major film companies, to the effect that the rule had been a dismal failure so far and nothing better could be expected in the future. Our position was stated in paragraph 91 of the Report and Order, where we said:

> In sum, while we do not believe the record is such as to warrant the complete restraint on network and off-network programming which the rule presently provides, we do not believe the rule has had a sufficient test to demonstrate what its future performance will be, so as to warrant further abandonment of it, in view of the benefits accruing * * *.

In paragraph 90 and footnote 38, we mentioned various points urged by opponents as reasons why the future would be no different from the record so far—limited economic potential in syndication, etc.—and expressed the view that these might be long-term factors, but that it had not yet been demonstrated that they would forever be the iron-clad limitations which are claimed. Therefore, bearing in mind the benefits which do flow from the rule in theory and to some extent in practice, it was not appropriate to abandon it to a greater extent. But we also had to assume that these factors may last for a long time, as limitations on developments realistically possible under the rule, and take measures to minimize the loss to the public if this should be true. We reached what we believed to be an appropriate balancing of these considerations, and we are of the same judgment today.

40. It also appears that little significance should be attached to the statements by Mr. Frank concerning his plans (not specifically discussed) for future programming of different types—sports, children's specials, documentaries, etc. As MCA points out, we have been through this before, noting in our August 1970 decision the mid-1970 statements by various producers as to their plans for the future, from which extremely little has in fact developed. If such programming developments do occur, from Frank, Time-Life, or others, the remaining "cleared" half-hours, approximately 15 in number, should provide considerable opportunity for their presentation.

41. As to the three specific changes of which Frank complains, the first is the removal of all restrictions on the first half-hour of prime time, 7–7:30 PM e.t. As to Monday–Friday, this was done because these periods produce singularly little in the way of support for new non-network material, being devoted by 90 percent of the stations subject to the rule either to news or to stripped game shows most of which were on TV, and to some extent in prime time, before the rule. Also, this is a period as to which there is no network pressure to clear time (assertedly a restriction on licensee freedom of decision) because the networks have not programmed this time. This being the case, it appears that the restriction serves little more than as a limitation on licensee freedom of choice in exercising his program responsibility—which Frank emphasizes as one of the main objectives of the rule. The other two changes, as they worked out in practice, represent increases in network programming, up to four hours on Sunday for network programs generally, and additional time on Saturdays for news-documentary, public affairs and children's programs. The general increase permitted represents a view that more opportunity should be given for those program sources which choose to operate through the network, which are deprived to some extent of access opportunity by the rule in its original form, and from which may come programming in the public interest. The second is an effort to get back into prime time certain kinds of programs—children's and documentary-public affairs—which either have tended to disappear from prime time for economic reasons or for which early evening hours are particularly important. We thought in reaching our decision that the compromise reached is appropriate, and we adhere to these views.

42. In practice, the cutback in "cleared" time is not as much as Frank believes. As mentioned, the 15 half-hours per market Monday–Friday at 7 contribute very little to the development of really new non-network programming; therefore the appropriate start is not 42 but 27 half-hours. This has been reduced by our rule changes to something in the order of 15, a reduction of about 44 per-

[16] We also mentioned other matters such as the asserted limited economic potential for non-network as compared to network programs (par. 90 and footnote 38) and the asserted desirability of increasing the number of network programs (par. 96), concluding generally that these were too uncertain, as long-term factors, to warrant a relaxation of the rule beyond that adopted.

cent.[17] We have found this reduction to be a reasonable compromise, and still are of that view.

43. Some other points should be noted about Frank's petition. First, it appears that Frank would have us attach, to an unwarranted extent, weight to the "first principles" mentioned in paragraph 13, above. These considerations were and are important. But the idea that we should not look further, at the record of the results under the rule, in terms of programming as otherwise, is a narrowly limited viewpoint which we find unacceptable, particularly since what is involved here is not simply access but exclusive access, as against other entities whose products may be as meritorious or more so. We have reached a compromise in this respect, preserving considerable opportunity for producers of new nonnetwork programs, and we conclude, as we did before, that it is an appropriate one. Second, in Frank's petition, and also in his reply, there is repeated reference to the fact that, as he sees it, the giant, vested interests gain by our revisions, and the small independent loses. The answer to this is that Commission judgments generally should not be and are not made based on the size of the entity involved on either side (the proponents of the original rule here include two of the largest multiple owners, Westinghouse and Metromedia, as well as Viacom, one of the powerful production and distribution entities). Rather, we have reached a result based on what appears to be the public interest—the interest of the public. Third, it is apparent that some of Frank's contentions cannot even remotely be considered public, rather than private, considerations. Thus, one of the two particular situations about which he complains in his personal statement is that WXYZ–TV, the ABC-owned station in Detroit, will buy only one of the programs he handles, instead of the two which he asserts it would have taken had the rule remained in its earlier form.

44. Mr. Frank also objects to one of our other adjustments in the rule, concerning time-zone differences (see par. 17, hereinabove). Bearing in mind that these events occur no more than 25 times a year for each network, and that the only stations involved are those in the Mountain and Pacific time zones (a total of 9 at most), we do not see reason to upset the rule in this regard. See Report and Order, pars. 108–109. Mr. Frank and also Time-Life in its opposition to other petitions, ask that the changes in the rule, if adhered to, be postponed a year. We recently decided this question on the basis of a petition by NAITPD, and see no reason to alter our decision that the rule amendments should become effective this September, in view of the importance of making desirable changes at a reasonably early date and the speculative nature of the "irreparable injury" allegations. We adhere to our decision in this respect also. See Report and Order, pars. 113–116, and Memorandum Opinion and Order denying Stay, FCC 74–221, adopted February 27 and released March 6, 1974.

45. *The Sandy Frank "anti-stripping" proposal.* As mentioned in par. 16 hereinabove, Mr. Frank asks us to adopt an "anti-stripping" or "anti-multiple exposure" rule, under which no station could present during the access period more than one program a week from any single program series. This would bar both "stripping" of game shows or off-network material, and twice-a-week presentation of programs such as Hollywood Squares and Lets Make a Deal. This, it is claimed, would provide access opportunity for many more independent producers as well as increasing program diversity.

46. This is to a degree an interesting idea, and one which might appeal to numerous persons, without any axe to grind, as one which should be adopted. However, it is a radical departure, and might well be labelled, perhaps properly, as an "elitist" kind of Commission action—telling a viewer he cannot watch his favorite access-period program two or five nights a week, but may view it only once and be content with less appealing fare (perhaps of the same type, perhaps of a different sort) on the other nights. Obviously, this would require substantial exploration before it could be considered for adoption.

47. This concept was not at all set forth in the notice of inquiry and proposed rulemaking herein, and was never advanced in this proceeding until after our January final decision (even its informal suggestion to the Commission, mentioned in the petition, was well after the date for reply comments in March 1973). Therefore, representing as it does a sharp departure, it comes much too late for consideration in our Docket 19622 deliberations. It may be appropriate for exploration at some point in the future.

48. In view of the foregoing, *it is ordered,* That:

(a) The petitions for reconsideration filed in this proceeding on March 18, 1974, by MCA Inc., United Artists Corporation, and Sandy Frank Program Sales, Inc., are denied;

(b) The Petition for Stay filed herein by United Artists Corporation on March 18, 1974, is dismissed as moot;

(c) The motions of Sandy Frank Program Sales, Inc., for leave to file pleadings of more than the prescribed length, in connection with the petition for reconsideration and in connection with the reply to oppositions, are granted; and

(d) This proceeding, Docket 19622, is terminated.

Adopted: April 25, 1974.

Released: May 2, 1974.

FEDERAL COMMUNICATIONS COMMISSION,[18]

[SEAL] VINCENT J. MULLINS, *Secretary.*

[FR Doc.74–10600 Filed 5–7–74;8:45 am]

[17] Some parties supporting the original rule, such as NAIPTD, claim that the figure of 15 must be reduced by the amount which licensees will devote to programming of particular local significance, as the Commission expects according to paragraph 88 of the Report and Order. However, that statement did not specify any particular amount, and it was made clear that it applied to programming in any part of prime time and not just the 7:30 periods. Moreover, it appears that not all of Saturday time this coming year, by any means, will be taken by network programs. NBC plans 44 one-hour Saturday programs (mostly news-documentary plus some children's programs); CBS plans 44 Saturday half-hours of children's programs at 7:30; and ABC plans no more than 12 one-hour Saturday programs (6 children's plus up to 6 documentary or public-affairs). These total 156 half-hours, and leave, on Saturdays, 56 half-hours of "cleared" time at 7:30, plus 100 half-hours of time at 7 p.m. which is not restricted by the rule and is available for new material, syndicated or local. Thus, the figure of 15 "cleared" half-hours remaining appears approximately correct.

Frank's analysis also appears to assume that every syndicated program has to be shown in every market to be successful, whereas in fact very few, if any, have been so far. Fifteen "cleared" half-hours a week will accommodate only 15 programs if all have to be shown in all 50 markets; but it would accommodate 18 or 19 if a more realistic average of 40 markets is assumed.

[18] Commissioners Wiley and Reid concurring.

proposed rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rulemaking prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 924]

[Docket No. AO-317-A1]

FRESH PRUNES GROWN IN DESIGNATED COUNTIES IN WASHINGTON AND IN UMATILLA COUNTY, OREGON

Recommended Decision and Opportunity to File Written Exceptions

Pursuant to the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders (7 CFR Part 900), notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to the proposed amendment of the marketing agreement and order (7 CFR Part 924), hereinafter referred to collectively as the "order", regulating the handling of fresh prunes grown in designated counties in the States of Washington and Oregon, to be effective pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "act," and any amendment which may result from this proceeding will also be effective pursuant to the act.

Interested persons may file written exceptions to this recommended decision with the Hearing Clerk, United States Department of Agriculture, Room 112, Administration Building, Washington, D.C. 20250, on or before May 23, 1974. Exceptions should be filed in quadruplicate. All such communications will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

Preliminary statement. The public hearing, on the record of which this proposed amendment of the order was formulated, was held in Yakima, Washington on February 28, 1974, pursuant to a notice thereof which was published in the FEDERAL REGISTER on February 20, 1974 (39 FR 6535). The notice contained amendment proposals which had been submitted to the Secretary of Agriculture by the Washington-Oregon Fresh Prune Marketing Committee (established pursuant to the marketing agreement and order).

Material issues. The material issues presented on the record were concerned with amending the order to:

(1) Revise the provisions which authorize marketing research and development projects to include authority for production research projects designed to assist, improve, or promote the marketing, distribution, and consumption or efficient production of fresh prunes.

(2) Authorize the issuance of expanded container regulations that could include specification of the minimum strength of material in containers of fresh prunes; and

(3) Make conforming changes.

Findings and conclusions. The following findings and conclusions on the material issues are based on evidence adduced at the hearing and the record thereof except as to item (2) which is hereby abandoned for the reasons hereinafter cited:

(1) The order presently contains authority for committee expenditures on marketing research and development projects designed to assist, improve, or promote the marketing, distribution, and consumption of prunes.

The order should be amended, as hereinafter set forth, to include authority for production research designed to assist, improve, or promote the marketing, distribution, and consumption or efficient production of fresh prunes.

For several years the committee has conducted marketing research projects aimed at maintaining the market quality of prunes so as to promote their marketing, distribution, and consumption. During this time it has become apparent to the committee that some of the quality problems affecting the marketing, distribution, and consumption of prunes originate in the orchard. A number of factors affect the production of quality fruit such as nitogen levels, root stocks, irrigation methods and firmness of the fruit at harvest. Often in its attempts to find solutions to marketing problems, the committee has found it difficult to separate production and marketing and it has concluded that unless its research can be extended into the production of the fruit much of its past efforts are likely to be lost for lack of final conclusion as to the cause of such problems. One such problem which has been the subject of study is internal browning of prunes. The incidence of this problem appears to be related to production factors but the committee has been hampered in its efforts to deal with the problem because it has not had authority to fund research which must be conducted at the orchard level.

The committee has been dependent upon other agencies to perform any production research and it has found that such research as well as other research of primary interest to the prune industry often cannot be undertaken or continued by the universities or other agencies in the research area without supplementary industry funding. Currently, the marketing order is considered as the only available industry agency through which all of the Washington-Oregon prune production area may equitably support research designed for its primary benefit. Authorizing the committee to engage in production research as contemplated by this amendment would enable it to fund such projects to the extent necessary from assessments under the order.

While it is evident that the committee's primary interest is in being able to conduct production research which may alleviate or contribute to the solution of marketing problems, the authority should not be so limited as to preclude production research with the primary aim of more efficient production. Rather, the order should permit the committee's conduct of or participation in research projects that are partly or exclusively production oriented if the need arises. Survival of the industry dictates that production be carried out efficiently. Advancing technology and changing economic situations render it difficult to foresee all the areas of production which may require study, therefore the authority should be broad enough in scope to permit the committee, subject to approval of the Secretary, to investigate any facet of production with a view toward improving the efficiency of production. In addition, new laws and regulation enacted for the protection of consumers and the environment may require research involving industry-wide cooperation to ascertain how to produce prunes most economically under such requirements. The expanded authority should enable the committee to participate in the development of production practices and procedures to meet the requirement of such laws and regulation especially when they would have an impact on the production and marketing of prunes.

In formulating production research projects the committee should be authorized to secure the advice and service of persons knowledgeable in any segment of the research field. The committee could establish subcommittees to assist it in the efficient and expeditious planning of production research projects or programs. Such subcommittees could explore research methods, develop preliminary projects and programs, and make recommendations with respect to any such activities. Subcommittees could also evaluate project activities at any state of completion. Final decisions of any such recommendation would be the prerogative of the committee subject to approval of the Secretary. In the conduct of any

production research projects, the committee should be authorized to conduct the projects, or to contract for the conduct of such projects, with persons or organizations that specialize in this field of activity.

In submitting projects to the Secretary for his approval, the committee should include recommendations as to the funds to be obtained from assessments under the order and its appraisal of the relative urgency of individual projects whenever several possibilities are involved. The committee should fully consider the cost of any such activities, when developing its budget, both as to additional items of expense and the applicable assessment rate. The committee should review its production research program annually to appraise its effectiveness. Copies of the annual report on the program should be provided to the Secretary and made available at the committee office for examination by producers, handlers, and other interested persons.

(2) The notice of hearing contained an amendment proposal to expand the authority for regulation of containers to include specifications of minimum strength of material. One witness supported this proposal on behalf of the Washington-Oregon Fresh Prune Marketing Committee. However, the Committee later, unanimously recommended abandonment of this proposal. The committee stated that the container situation is in a state of flux due to shortages of various types of materials and that opposition, which was not apparent at the hearing, has developed. It is therefore concluded that the proposal should be dropped from further consideration in this proceeding.

(3) No conforming changes are necessary.

Ruling on proposed findings and conclusions. March 25, 1974, was fixed as the final date for the filing of briefs with respect to the facts presented in evidence at the hearing and on the findings and conclusions that should be drawn therefrom. No brief was filed.

General findings. Upon the basis of the evidence adduced at such hearing, and the record thereof, it is found that:

(1) The marketing agreement and order, as hereby proposed to be amended, and all the terms and conditions thereof, will tend to effectuate the declared policy of the act;

(2) The said marketing agreement and order, as hereby proposed to be amended, regulate the handling of prunes grown in the production area in the same manner as, and are applicable only to persons in the respective classes of commercial or industrial activity specified in a proposed marketing agreement and order upon which a hearing has been held;

(3) The said marketing agreement and order, as hereby proposed to be amended, are limited in their application to the smallest regional production area which is practicable, consistently with carrying out the declared policy of the act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the act;

(4) The said marketing agreement and order, as hereby proposed to be amended, prescribe, so far as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the differences in the production and marketing of prunes grown in the production area; and

(5) All handling of prunes grown in the production area as defined in said marketing agreement and order, as hereby proposed to be amended, is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

Recommended amendment of the marketing agreement and order. The following amendment of the order is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out:

Redesignate and revise § 924.45 to read:

§ 924.45 **Research and development.**

The committee, with the approval of the Secretary, may establish or provide for the establishment of production research, and marketing research and development projects designed to assist, improve, or promote the marketing, distribution, and consumption or efficient production of fresh prunes. The expense of such projects shall be paid from funds collected pursuant to § 924.41.

* * * * *

Dated: May 2, 1974.

JOHN C. BLUM,
Associate Administrator.

[FR Doc.74-10533 Filed 5-7-74;8:45 am]

Rural Electrification Administration

[7 CFR Part 1701]

DISTRIBUTION AND TRANSMISSION FACILITIES

Preparation of Plans and Specifications

Notice is hereby given that, pursuant to the Rural Electrification Act, as amended (7 U.S.C. 901 et seq.), REA proposes to issue revised REA Bulletin 81-9, Preparation of Plans and Specifications for Distribution and Transmission Facilities, and attached REA Form 230, Check of Plans and Specifications, to provide REA requirements and guidance to borrowers and their engineers in the preparation of plans and specifications for construction of distribution and transmission facilities using Electric System Construction Contract, REA Form 830; Electric Transmission Construction Contract, REA Form 831; or Substation and Switching Station Erection Contract, REA Form 764.

Persons interested in the provisions of revised REA Bulletin 81-9 may submit written data, views or comments to the Director, Power Supply, Management and Engineering Standards Division, Room 3313, South Building, USDA-REA, Washington, D.C. 20250, on or before June 7, 1974. All written submissions made pursuant to this notice will be made available for public inspection at the Office of the Director, Power Supply, Management and Engineering Standards Division, during regular business hours.

A copy of the proposed revision of the REA bulletin and attachment may be secured in person or by written request from the Director, Power Supply, Management and Engineering Standards Division.

A summary of the proposed changes in the revised bulletin and checklist is as follows:

1. The present bulletin and checklist covers only plans and specifications involving the Electric System Construction Contract, REA Form 830. The revised bulletin and checklist is applicable to the latest revision of REA Form 830, and in addition, to plans and specifications for construction utilizing the Electric Transmission Construction Contract, REA Form 831 and the Substation and Switching Station Erection Contract, REA Form 764.

2. Additions have been made in the bulletin and checklist to cover all environmental design or construction requirements. The plans and specifications must incorporate applicable commitments made in an Environmental Statement or Analysis.

3. Modifications have been made in the bulletin to reflect the current requirements and procedures included in REA Bulletin 40-6, "Construction Methods and Purchase of Materials and Equipment," regarding REA approval of plans and specifications.

4. As proposed, the bulletin has been made applicable to the construction of transmission facilities by REA power supply as well as distribution borrowers.

Dated: May 1, 1974.

DAVID H. ASKEGAARD,
Assistant Administrator.

[FR Doc.74-10532 Filed 5-7-74;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Social and Rehabilitation Service

[45 CFR Part 233]

COVERAGE AND CONDITIONS OF ELIGIBILITY IN FINANCIAL ASSISTANCE PROGRAMS

General Provisions

Notice is hereby given that the regulations set forth in tentative form below are proposed by the Administrator, Social and Rehabilitation Service, with the approval of the Secretary of Health, Education, and Welfare.

The proposed regulation represents the Department's views as to the scope of State discretion in establishing coverage and conditions of eligibility for the public assistance programs under titles I, IV-A, X, XIV, and XVI of the Social Security Act in light of recent actions of the U.S. Supreme Court.

Since enactment of the Social Security Act of 1935, the Department and the States have viewed the statutory provisions and legislative history of the public assistance titles of the Act as according States considerable flexibility in prescribing coverage and the conditions of eligibility for assistance. State plans were approved by the Department if they did not exclude individuals or groups on an unreasonable or arbitrary basis and did not result in the inequitable treatment of individuals. This view of the Act is reflected in the Department's current regulation at 45 CFR 233.10(a)(1)(i) and (ii). In recent years, however, the Supreme Court, in a number of actions (opinions, affirmances, and remands), has affected this view of the Act and has limited the traditional discretion of States in determining the individuals who are to be included under their public assistance programs. In response to each of these actions, the Department has issued in proposed or final form a number of regulations. See 45 CFR 233.90(b)(2), (3), and (4), and the proposed regulation at 38 FR 23802 (September 4, 1973).

While the States are, of course, bound to follow the decisions of the Supreme Court even without an articulation of their import by the Federal agency, the Department believes that because of the number of Court actions in this area in the last few years and the complexity of the issues involved, it would be useful at this time to revise its general regulation at 45 CFR 233.10(a)(1) to reflect directly the recent decisional law in this area.

In Townsend v. Swank, 404 U.S. 282 (1971), the U.S. Supreme Court noted the Department's present regulation at 45 CFR 233.10(a)(1) and implied that to the extent it permitted States to "vary eligibility requirements from federal standards" without Congressional authorization for the variance, the rule was invalid. 404 U.S. at 286. The Townsend decision, however, raised and left unresolved several questions as to the authority of the States to establish conditions of eligibility under their public assistance programs. The broad language of the decision suggested the possibility that the Court viewed the Act as precluding the States from imposing upon applicants for or recipients of assistance any requirements that affected their eligibility as determined under the Act. It appeared, however, that this interpretation of the Social Security Act was inconsistent with the Court's earlier actions in Wyman v. James, 400 U.S. 309 (1971) and Snell v. Wyman, 313 U.S. 323 (1969), affirming 281 F. Supp. 853 (N.D. N.Y. 1968), in which the Court had upheld State requirements which did affect the eligibility of individuals who were covered under the Act. Thus, questions remained with respect to the authority of the States to impose their own conditions of eligibility upon individuals eligible for assistance under the standards set forth in the Act.

In Carleson v. Remillard, 406 U.S. 598 (1972), the Court affirmed its previous disapproval of the HEW regulations (45 CFR 233.10(a)(1)). The Remillard decision, however failed to clarify the inconsistency between the Court's actions in Wyman v. James and Snell v. Wyman, supra, and its holdings in Townsend v. Swank and Remillard. Thus the question regarding the extent, if any, to which States could exclude from AFDC assistance individuals eligible therefor under Federal standards remains unanswered.

In New York State Department of Social Services v. Dublino 413 U.S. 405 (1973), the Court upheld a New York statutory scheme which permits the exclusion from the State's AFDC program of individuals eligible under the standards set forth in the definitional sections of title IV–A of the Act. The Dublino decision is important for it clarified the Court's previously ambiguous views with respect to the authority of States to impose their own conditions of eligibility for public assistance. First, the Court was careful to reaffirm the Federal State nature of the public assistance programs, stating that States must be permitted "considerable latitude" in attempting to resolve their increasing fiscal problems, including "the critical problem of mounting welfare costs and the increasing financial dependence of many of [their] citizens." 413 U.S., at 413. In addition, the Court firmly indicated that Congressional authorization for the States to exclude individuals covered under the Act exists in areas beyond the work incentive context. Citing Wyman v. James and Snell v. Wyman, the Court found that State regulations "promulgated within the legitimate sphere of State administration"—"even if they become conditions for continued assistance"—are not necessarily invalid under the Act, as construed in Townsend v. Swank. 413 U.S., at 422. Hence, in Dublino the Court indicated that States are not barred by the Act from imposing eligibility conditions which are not contained in the Act upon individuals eligible for assistance under Federal standards. Indeed, Dublino affirmed the States' discretion to impose such eligibility conditions as long as they assist the States in the efficient administration of their AFDC programs or further an independent State welfare policy and are not inconsistent with the provisions and purposes of the Social Security Act.

The attached revision of 45 CFR 233.10(a)(1) articulates for States the Department's view of the Act in light of recent Supreme Court decisions, particularly those in Townsend v. Swank, Carleson v. Remillard, and New York Department of Social Services v. Dublino, supra. It reaffirms the basic Federal-State nature of the public assistance programs and the fundamental principle that States have considerable latitude in establishing the conditions which individuals must meet in order to be eligible for assistance under the States' programs. The definitional sections of the Social Security Act (e.g. sections 406(a), 407, 408) set forth the groups of individuals who are covered under the Act (i.e., eligible for assistance under Federal standards), and the States may exclude one or more such groups from the scope of coverage under their programs only where the Act or its legislative history authorizes such an exclusion. The States may, however, impose their own conditions of eligibility which, if not satisfied, result in denial or termination of aid, if these conditions either assist the States in the efficient administration of their assistance programs or further an independent State welfare policy and are not inconsistent with the provisions and purposes of the Act. The proposed regulation reflects this view of the Act.

Thus, subparagraph (i) of the proposal provides that a State shall impose each condition of eligibility required by the Social Security Act, e.g., the condition in section 402(a)(19)(A) that every individual who is required to do so under the Act register for manpower services, training, and employment. Subparagraph (ii)(A) states that a State may provide more limited coverage than that permitted under the Social Security Act only where the Act or its legislative history authorizes a more limited coverage, e.g., the optional provision in section 406(a)(2)(B) which allows the States to exclude persons between the ages of 18 and 21 years who are regularly attending a school, college, or university, or regularly attending a course of vocational or technical training designed to fit them for gainful employment. Subparagraph (ii)(B) provides that a State may impose conditions upon applicants for and recipients of public assistance, even if those conditions, if not satisfied, result in the denial or termination of assistance, as long as they assist the State in the efficient administration of its public assistance programs or further an independent State welfare policy and are not inconsistent with the provisions and purposes of the Act. For example, a State may require individuals to participate in a supplementary State work program as a condition of eligibility for assistance; or, as a further example, a State may establish, as a condition for including a parent's needs in his family's AFDC grant, a requirement that the parent of an AFDC child assist in establishing the paternity of a child born out of wedlock or in seeking support from a person having a legal duty to support the child (see 45 CFR 233.90(b)(4) (38 FR 10940, May 3, 1973)).

Prior to the adoption of the proposed regulations, consideration will be given to any comments, suggestions, or objections thereto which are received in writing by the Administrator, Social and Rehabilitation Service, Department of Health, Education, and Welfare, P.O. Box 2366, Washington, D.C. 20013, on or before June 7, 1974. Comments received will be available for public inspection in Room 5326 of the Department's offices at 330 C Street, S.W., Washington, D.C. 20201, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (area code 202–245–0950).

AUTHORITY: Section 1102, 49 Stat. 647 (42 U.S.C. 1302). (Catalog of Federal Domestic

Assistance Program No. 13.761, Public Assistance—Maintenance Assistance (State Aid)).

Dated: April 29, 1974.

JAMES S. DWIGHT, Jr.,
Administrator, Social and Rehabilitation Service.

Approved: May 2, 1974.

CASPAR W. WEINBERGER,
Secretary.

Section 233.10(a)(1) of 45 CFR Part 233 is amended to read as set forth below:

§ 233.10 General provisions regarding coverage and eligibility.

(a) *State plan requirements.* A State plan under title I, IV–A, X, XIV, or XVI, of the Social Security Act must:

(1) Specify the groups of individuals, based on reasonable classifications, that will be included in the program, and all the conditions of eligibility that must be met by the individuals in the groups. The groups selected for inclusion in the plan and the eligibility conditions imposed must not exclude individuals or groups on an arbitrary or unreasonable basis, and must not result in inequitable treatment of individuals or groups in the light of the provisions and purposes of the public assistance titles of the Social Security Act. Under this requirement:

(i) A State shall impose each condition of eligibility required by the Social Security Act; and

(ii) A State may:

(A) Provide more limited public assistance coverage than that provided by the Act only where the Social Security Act or its legislative history authorizes more limited coverage;

(B) Impose conditions upon applicants for and recipients of public assistance which, if not satisfied, result in the denial or termination of public assistance, if such conditions assist the State in the efficient administration of its public assistance programs, or further an independent State welfare policy, and are not inconsistent with the provisions and purposes of the Social Security Act.

(iii) There must be clarity as to what groups are included in the plan, and which are within, and which are outside, the scope of Federal financial participation.

(iv) Eligibility conditions must be applied on a consistent and equitable basis throughout the State.

(v) A plan under title XVI must have the same eligibility conditions and other requirements for the aged, blind, and disabled, except as otherwise specifically required or permitted by the Act.

(vi) Eligibility conditions or agency procedures or methods must not preclude the opportunity for an individual to apply and obtain a determination of eligibility or ineligibility.

(vii) Methods of determining eligibility must be consistent with the objective of assisting all eligible persons to qualify.

* * * * *

[FR Doc.74–10574 Filed 5–7–74;8:45 am]

DEPARTMENT OF TRANSPORTATION

Coast Guard

[46 CFR Parts 34, 76, 95, 181, 193]

[CGD 74 100]

CO_2 FIXED FIRE EXTINGUISHING SYSTEMS

Proposal Regarding Operating Instructions

The Coast Guard is considering amending the details contained in operating instructions for CO_2 fixed fire extinguishing systems.

Any interested person may submit written data, views, or argument concerning this notice to U.S. Coast Guard (G-CMC/82) Washington, D.C. 20590. All communications received before June 24, 1974, will be considered before action is taken on the proposed regulations. Each person submitting comments should include his name and address, identify this notice (CGD 74 100) and give reasons and supporting data for any recommendations. All comments received will be available for examination in Room 8234. No hearing is contemplated, but will be held if requested by anyone who raises a genuine issue. The purpose of this proposed change is to modify the requirement which states:

> Complete but simple instructions for the operation of the System shall be located in a conspicuous place at or near the releasing control device.

The modification will require an additional instruction sheet to be posted in the CO_2 cylinder storage room. Moreover, the instruction must contain a schematic diagram of the CO_2 system and instruction on releasing the agent through alternate means, should the primary or secondary release mechanism fail. Recent casualty reports have shown that had this information been available, a number of casualties might have been avoided or their effect minimized.

In consideration of the foregoing it is proposed to amend Parts 34, 76, 95, 181, and 193 of Title 46 of the Code of Federal Regulations as follows:

1. In §§ 34.15–10(h), 76.15–10(h), 95.15–10(h), 181.20–15(d), 193.15–10(h) by revising the text to read as follows:

"Complete but simple instructions for the operation of the system(s) must be located in a conspicuous place at or near the releasing control devices and in the CO_2 cylinder storage room. These instructions must also include a schematic diagram of the system and instructions detailing alternate methods of discharging the system if the primary or secondary means of release fail."

(46 U.S.C. 375, 390b, and 391a; 49 U.S.C. 1655(b); 46 CFR 1.46(b) and 1.46(o)(4)).

W. F. REA, III,
Rear Admiral, U.S. Coast Guard, Chief, Office of Merchant Marine Safety.

[FR Doc.74–10605 Filed 5–7–74;8:45 am]

Federal Aviation Administration

[14 CFR Part 71]

[Airspace Docket No. 74–CE–7]

ALTERATION OF TRANSITION AREA

Notice of Proposed Rulemaking

The Federal Aviation Administration is considering amending Part 71 of the Federal Aviation Regulations so as to alter the transition area at St. Louis, Missouri.

Interested persons may participate in the proposed rule making by submitting such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Director, Central Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, Federal Building, 601 East 12th Street, Kansas City, Mo. 64106. All communications received on or before June 7, 1974, will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Regional Air Traffic Division Chief. Any data, views, or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

A public docket will be available for examination by interested persons in the Office of the Regional Counsel, Federal Aviation Administration, Federal Building, 601 East 12th Street, Kansas City, Mo. 64106.

Since designation of controlled airspace at St. Louis, Missouri, a new instrument approach procedure is being developed for Weiss Municipal Airport, Fenton, Missouri. Accordingly, it is necessary to alter the transition area at St. Louis, Missouri, to adequately protect aircraft executing this new approach procedure.

In consideration of the foregoing, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations as hereinafter set forth:

In § 71.181 (39 FR 440), the following transition area is amended to read:

ST. LOUIS, MISSOURI

That airspace extending upward from 700 feet above the surface within a ten-mile radius of Lambert-St. Louis International Airport (latitude 38°44'50" N., longitude 90°21'55" W.); within five miles southeast and eight miles northwest of the Lambert-St. Louis International Airport Runway 24 ILS localizer northeast course, extending from the ten mile radius area to 12 miles northeast of the Runway 24 OM; within five miles southwest and nine miles northeast of the Lambert-St. Louis International Airport Runway 12R ILS localizer northwest course; extending from the Runway 12R OM to 12 miles northwest of the OM; within a seven mile radius of St. Charles Smartt Airport, St. Charles, Missouri (latitude 38°55'43" N., longitude 90°25'41" W.); within an eight mile radius

of Civic Memorial Airport, Alton, Illinois (latitude 38°53'30" N., longitude 90°03'00" W.); within a 6.5 mile radius of Weiss Municipal Airport, Fenton, Missouri (latitude 38°32'15" N., longtitude 90°26'50" W.); and that airspace extending upward from 1,200 feet above the surface within a 33-mile radius of St. Louis International Airport; within six miles southwest and nine miles northeast of the St. Louis VORTAC 328° radial, extending from the 33-mile radius area to 36 miles northwest of the VORTAC; within five miles northwest and eight miles southeast of the Maryland Heights VORTAC 243° radial, extending from the 33-mile radius area to 19 miles southwest of the VORTAC; within the area bounded on the west and northwest by the east and southeast edge of V-14S, on the northeast by the 33-mile radius area, on the southeast by the northwest edge of V-238 and on the south by the north boundary of V-88 within a 40-mile radius of Scott AFB (latitude 38°32'30" N., longtitude 89°51'05" W.); excluding the portion overlying the State of Illinois; that airspace extending upward from 2,500 feet MSL within the area bounded on the northwest by the southeast edge of V-335, on the east by the Missouri-Illinois boundary, on the south by the north edge of V-190 and on the west by the east edge of V-9; and that airspace extending upward from 4,500 feet MSL within the area bounded on the north by the south edge of V-88, on the northeast by the southwest edge of V-9W, on the south by the north edge of V-72, on the west by a line five miles west of and parallel to the St. Louis VORTAC 200° radial, on the northwest by the southeast edge of V-238; within the area bounded on the north by the south edge of V-12, on the southeast by the northwest edge of V-14N, on the southwest by the northeast edge of V-175, and on the northwest by a line five miles southeast of and parallel to the Jefferson City, Missouri, VOR 041° radial, and within the area bounded on the northeast by the southwest edge of V-52 and the Missouri-Illinois boundary, on the south by the north edge of V-4N, and on the northwest by the southeast edge of V-63.

This amendment is proposed under the authority of section 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348), and of section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Kansas City, Missouri, on April 21, 1974.

GEORGE R. LACAILLE,
Acting Director, Central Region.

[FR Doc.74-10548 Filed 5-7-74;8:45 am]

[Airspace Docket No. 74-SO-47]

[14 CFR Part 71]

DESIGNATION OF TRANSITION AREA

Notice of Proposed Rulemaking

The Federal Aviation Administration is considering an amendment to Part 71 of the Federal Aviation Regulations that would designate the Brooksville, Fla., transition area.

Interested persons may submit such written data, views, or arguments as they may desire. Communications should be submitted in triplicate to the Federal Aviation Administration, Southern Region, Air Traffic Division, P.O. Box 20636, Atlanta, Ga. 30320. All communications received on or before June 7, 1974, of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Chief, Airspace and Procedures Branch. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in light of comments received.

The official docket will be available for examination by interested persons at the Federal Aviation Administration, Southern Region, Room 645, 3400 Whipple Street, East Point, Ga.

The Brooksville transition area would be designated as:

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Hernando County Airport (Lat. 28°27'50" N., Long. 82°27'30" W.); within 3 miles each side of the 276° bearing from Brooksville RBN (Lat. 28°28'25" N., Long. 82°27'00" W.), extending from the 6.5-mile radius area to 8.5 miles west of the RBN.

The proposed designation is required to provide controlled airspace protection for IFR operations at Hernando County Airport. A prescribed instrument approach procedure to this airport, utilizing the Brooksville (private) Nondirectional Radio Beacon, is proposed in conjunction with the designation of this transition area.

This amendment is proposed under the authority of section 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348(a)) and of section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued at East Point, Ga., on April 30, 1974.

LONNIE D. PARRISH,
Acting Director, Southern Region.

[FR Doc.74-10550 Filed 5-7-74;8:45 am]

[Airspace Docket No. 74-GL-11]

[14 CFR Part 71]

DESIGNATION OF TRANSITION AREA

Notice of Proposed Rulemaking

The Federal Aviation Administration is considering amending Part 71 of the Federal Aviation Regulations so as to designate a transition area at Litchfield, Minnesota.

Interested persons may participate in the proposed rulemaking by submitting such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Director, Great Lakes Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018. All communications received on or before June 7, 1974, will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Regional Air Traffic Division Chief. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

A public docket will be available for examination by interested persons in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

A standard instrument approach procedure has been developed for the Litchfield Municipal Airport, Litchfield, Minnesota. Consequently, it is necessary to provide controlled airspace protection for aircraft executing this approach procedure by designating a transition area at Litchfield, Minnesota.

In consideration of the foregoing, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations as hereinafter set forth:

In § 71.181 (39 FR 440), the following transition area is added:

LITCHFIELD, MINNESOTA

That airspace extending upward from 700 feet above the surface within a five mile radius of the Litchfield Municipal Airport (latitude 45°08'00" N., longitude 94°30'45" W.); and within three and one half miles each side of the Darwin VORTAC 139° radial extending from the five mile radius of 11½ miles southeast of the VORTAC.

This amendment is proposed under the authority of section 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348), and of section 6(c) of the Department of Transportation Act [49 U.S.C. 1655(c)]

Issued in Des Plaines, Illinois, on April 24, 1974.

JOHN M. CYROCKI,
Director, Great Lakes Region.

[FR Doc.74-10549 Filed 5-7-74;8:45 am]

[Airspace Docket No. 74-SO-45]

[14 CFR Part 71]

ALTERATION OF VOR FEDERAL AIRWAY

Notice of Proposed Rulemaking

The Federal Aviation Administration (FAA) is considering an amendment to Part 71 of the Federal Aviation Regulations that would realign a VOR Federal Airway between Brookwood, Ala., and La Grange, Ga.

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 June 7, 1974, will be considered before action is taken on the proposed amendment. The proposal contained in this notice may be changed in the light of comments received.

An official docket will be available for examination by interested persons at the Federal Aviation Administration, Office

of the General Counsel, Attention: Rules Docket, 800 Independence Avenue SW., Washington, D.C. 20591. An informal docket also will be available for examination at the office of the Regional Air Traffic Division Chief.

The proposed amendment would realign V-66 from Brookwood, Ala., direct to LaGrange, Ga. This realignment would provide a shorter route between these points thereby eliminating request for radar vectors. Also, this routing would improve traffic flow to the Atlanta, Ga., terminal area.

This amendment is proposed under the authority of section 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 May 1, 1974.

GORDON E. KEWER,
Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc.74-10547 Filed 5-7-74;8:45 am]

[Airspace Docket No. 74-SO-7]

[14 CFR Part 71]

DESIGNATION OF FEDERAL AIRWAY

Withdrawal of Notice of Proposed Rulemaking

On February 20, 1974, a notice of proposed rulemaking (NPRM) was published in the FEDERAL REGISTER (39 FR 6538) stating that the Federal Aviation Administration (FAA) was considering an amendment to Part 71 of the Federal Aviation Regulations that would designate a VOR Federal Airway from Huntsville, Ala., to Rome, Ga.

Two comments were received in response to the NPRM. The Air Transport Association of America concurred with the proposal. The Department of the Navy objected. This objection was based on the fact that the proposed airway would greatly reduce the size of two aerobatic training areas which could not be relocated at this time. The FAA acknowledges that the Navy's objection is valid and will therefore withdraw the NPRM. The withdrawal of this notice, however, does not preclude the future issuance of a similar NPRM by the FAA.

In consideration of the foregoing, notice is hereby given that the proposal contained in Airspace Docket No. 74-SO-7 (39 FR 6538) is withdrawn.

This withdrawal is made under the authority of section 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 May 2, 1974.

GORDON E. KEWER,
Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc.74-10551 Filed 5-7-74;8:45 am]

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 52]

APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Alaska; Proposed Compliance Schedules

On May 31, 1972 (37 FR 10842), pursuant to section 110 of the Clean Air Act and 40 CFR Part 51, the Administrator approved with specific exceptions, the State of Alaska plan for implementation of the national ambient air quality standards.

On August 16, 1973 and January 21, 1974, the State of Alaska Department of Environmental Conservation submitted revisions to the Administrator on their implementation plan in the form of permits issued by the State containing compliance schedules for the following companies:

Source:	*Location*
Alaska Lumber & Pulp Co	Sitka.
Ketchikan Pulp Co	Ward Cove.
Wrangell Lumber Co	Wrangell.

The Administrator is required by section 110 of the Act to approve or disapprove any revision of an implementation plan submitted by a State. Therefore, public comment is invited on whether the Administrator should approve or disapprove the permits named above as revisions to the State plan.

Copies of the proposed revisions are available for public inspection during normal business hours at the Office of EPA, Region X, 1200 Sixth Avenue, Seattle, Washington 98101; State of Alaska Department of Environmental Conservation, Pouch O, Juneau, Alaska 99801; Cook Inlet Air Resources Management District, % Greater Anchorage Area Borough, 3500 Tudor Road, Anchorage, Alaska 99507; Fairbanks North Star Borough, 514 Second Avenue, Fairbanks, Alaska 99707; Environmental Protection Agency, Alaska Operations Office, Room G-66, Federal Building, 605 Fourth Avenue, Anchorage, Alaska 99501; and at the Freedom of Information Center, EPA, Room 329, 401 M Street SW., Washington, D.C. 20460.

Interested persons may participate in this rulemaking by submitting written comments, preferably in triplicate to the Regional Administrator, Environmental Protection Agency, Region X, 1200 Sixth Avenue, Seattle, Washington 98101: Attention: J. Akins. Relevant comments received on or before June 7, 1974, will be considered, and will be available during normal working hours at the Region X Office.

This notice of proposed rulemaking is issued under authority of section 110(a) of the Clean Air Act as amended. 42 U.S.C. 1857c-5(a).

Dated: May 2, 1974.

JOHN QUARLES,
Acting Administrator.

[FR Doc.74-10587 Filed 5-7-74;8:45 am]

[40 CFR Part 52]

APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Idaho; Proposed Compliance Schedules

On May 31, 1972 (37 FR 10842), pursuant to section 110 of the Clean Air Act and 40 CFR Part 51, the Administrator approved with specific exceptions, the State of Idaho plan for implementation of the national ambient air quality standards.

The Idaho State Department of Environmental and Community Services submitted revisions to the Administrator on their implementation plan in the form of compliance schedules adopted by the State for the following companies:

Source:	*Location*
Amalgamated Sugar Co	Mini-Cassia.
Do	Nampa.
Do	Twin Falls.
The Bunker Hill Co	Kellogg.
J. R. Simplot Co	Pocatello.
The Monsanto Co	Soda Springs.
Potlatch Corp	Jaype.
Do	St. Maries.

The Administrator is required by section 110 of the Act to approve or disapprove any revision of an implementation plan submitted by a State. Therefore, public comment is invited on whether the Administrator should approve or disapprove the compliance schedules named above as revisions to the State plan.

Copies of the proposed revisions are available for public inspection during normal business hours at the Office of EPA, Region X, 1200 Sixth Avenue, Seattle, Washington 98101; Idaho Department of Environmental and Community Services, Statehouse, Boise, Idaho 83720; and at the Freedom of Information Center, EPA, Room 329, 401 M Street SW., Washington, D.C. 20460.

Interested persons may participate in this rulemaking by submitting written comments, preferably in triplicate to the Regional Administrator, Environmental Protection Agency, Region X, 1200 Sixth Avenue, Seattle, Washington 98101: Attention: J. Akins. Relevant comments received June 7, 1974, will be considered and will be available during normal working hours at the Region X Office.

This notice of proposed rulemaking is issued under authority of section 110(a) of the Clean Air Act as amended. 42 U.S.C. 1857c-5(a).

Dated: May 2, 1974.

JOHN QUARLES,
Acting Administrator.

[FR Doc.74-10588 Filed 5-7-74;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.

FEDERAL POWER COMMISSION

[Docket No. RM74-22, E-8589, Docket No. E-8550, etc.[1]]

NEW ENGLAND POWER POOL, ET AL. AND APPALACHIAN POWER CO., ET AL.

Settlement Rate Proposals; Request for Comments and Hearings

APRIL 30, 1974.

This notice is issued pursuant to the Administartive Procedure Act, 5 U.S.C. 551, et seq., (1970), and the Federal Power Act, 16 U.S.C. 791(a), et seq., (1970), particularly sections 824a, d, e, f, and 825g and h thereof. It sets forth proposed settlement rates and charges upon the basis of which a number of affected public utilities, state public service commissions and principal members of the Commission staff who have patricipated in public conferences in Docket No. E-8589, believe the Commission should resolve a number of questions arising in a series of dockets associated with fuel conservation energy transfers from the midwestern and southeastern portions of the Nation to the Middle Atlantic, New York and New England area.

This notice provides opportunity for interested parties to file comments, in the manner and within the time set forth below. The Commission will consider all filed comments, together with the public conference record and all other submittals in any of the above-docketed matters which have been submitted to the Commission, before taking any final action in these dockets.

Fundamentally, the questions which the Commission is here considering are twofold: First, we are considering the proposed settlement rates, charges, terms, and conditions of Fuel Conservation rate schedules as summarized in Exhibit C (Revised April 12, 1974), as developed in the conference record (E-8589), TR 1010-1013, 690-875, and as identified hereinafter as Appendix A (Revised April 22, 1974), which record was transmitted to the Commission by staff on April 16, 1974; second, the Commission is considering Motions, Protest and Petitions filed by the City of Richmond, Indiana, owner of Richmond Power & Light, and Congressman Michael J. Harrington, at various times, March 28, 1974, April 8, 1974, and April 15, 1974,[2] all of which oppose the proposed settlement basis for fuel conservation energy transfer arrangements and rates and charges for fuel conservation services among a number of utilities. The proposed settlement rates and charges were negotiated under the aegis of a staff conducted public conference called by the Commission in order to cope with national fuel oil shortage conditions occasioned in 1973 and 1974. The record which has been developed is a public conference type record, not an adjudicatory adversary record in which factual data are developed through direct and cross-examination procedures. The Commission's order of January 11, 1974, Order Directing Clarification of Pleading and Fixing Staff Conference, in Docket No. E-8589, established a public conference procedure. The City and Congressman Harrington have requested a hearing. This notice provides that hearing. The Commission intends to prescribe the lawful rates, charges, terms and conditions for Fuel Conservation services in this rulemaking proceeding.

The gravamen of City's objections and Congressman Harrington's objections are not clear. On the one hand, these petitioners appear to be attacking the whole fuel conservation energy transfer program of the utilities, the structure of the electric utility industry and the proposed settlement rates and charges, particularly those involving transmission services. Petitioners appear to favor an incremental cost justification. Among their objections, the following criticisms appear:

Petitions to Intervene, Protests and Motions of Richmond Power & Light, filed April 15, 1974, Docket No. E-8550, et al.

Page 8—"It is improper to disguise transmission rates as purchase and resale middleman rates, particularly where the transmitter is given unabridged control over the selection of purchasers and the quantity of purchases."

Page 8—"No mechanism is established whereby sellers and ultimate purchasers can do business directly with each other, and whereby Sellers can compete with each other on the basis of economics to make such sales, and ultimate purchasers can similarly compete for purchases."

Petition of Congressman Michael J. Harrington To Protest, For Leave To Intervene For Rejection of and Public Hearings on Filings, filed April 15, 1974, Docket No. E-8550, et al.

Page 4—"The Commission should issue orders revising the present policy in such a way that any utility may buy power from any other utility in the nation and be assured of transmission, if capacity is available, between the two points, at incremental transmission costs, not an arbitrary negotiated price."

On the other hand, Richmond Power & Light's Motion of March 28, 1974, repeated in its April 15, 1974, Petition, appears to favor certain of the settlement rates and charges (those with respect to generation) since the City states that it would engage in fuel conservation energy transfers on that basis (Petition, pp. 3-4). See also, Richmond's April 22, 1974, Reply, footnote 2, supra, (p. 2).

The Commission desires to have an evidentiary record before it in these proceedings, in passing upon the proposed settlement rates and charges, and in considering the objections thereto of the City of Richmond. Congressman Harrington or others. In particular, the Commission directs all parties having fuel conservation rate schedules proffered to the Commission in these matters to submit all cost or other justification of the proposed rates and charges for the fuel conservation energy transfers which they propose to rely upon, as well as the submission of cost or other data by any other party proffered in opposition. Specifically, the Commission desires a further explanation and development through a detailed statement of positions by the City and Congressman Harrington, as to how this Commission should grant the substantive relief they seek, other than with respect to rates and charges, and by what legal authority it would grant their requests. The Commission desires to have the cost data presentations which the City and Congressman Harrington wish the Commission to consider. The Commission desires any responses thereto by any affected interests.

The Commission believes that in these dockets it should adopt the informal hearing procedure of the Administrative Procedure Act to set rates and charges for fuel conservation services. We have legal authority for so doing. U.S. v. Florida East Coast Ry., 410 U.S. 224 (1973); Phillips Petroleum Co. v. FPC, 475 F. 2d 842 (10th Cir. 1973), cert. denied sub nom. Chevron Oil Co., et al, v. FPC, No. 73-91, 42 USLW 3401 (January 14, 1974); and U.S. v. Allegheny-Ludlum Steel Corp., 406 U.S. 742 (1972). There has not been an evidentiary hearing in various pending proceedings in Appalachian Power Company, et al., Docket Nos. E-8550, E-8565, E-8567, E-8591 and E-8614. The petitions and protests of the City of Richmond, Indiana, and Congressman Harrington request an evidentiary hearing. This notice affords that hearing. The various pleadings of the City and Congressman Harrington which were filed with the Commission after the conclusion of the April 11, 1974, public conference make it inappropriate for the

[1] See Appendix C hereto for a list of all pending docketed rate filings involving Fuel Conservation Power and Energy, pursuant to settlement agreement in Docket No. E-8589.

[2] The latest filing by the City of Richmond being "RP&L Reply to Answer of Appalachian Power Company, et al., filed April 16, 1974", which was filed by Richmond on April 22, 1974.

Commission to adopt the procedural recommendations of Commission staff, on the conference record, for the disposition of these matters.

Pending the conclusion and final decision of the Commission in this proceeding, the Commission will consider that all settlement rates and charges as set forth in annexed Appendix A (revised) have been conditionally tendered for filing for settlement purposes and that the subject utilities are not seeking to have them become effective within 30 days after filing. However, to insure that no parties' interests are adversely affected, the Commission will, as a matter of course, by separate orders, suspend for one day the effective dates of any rate schedules which are complete and the filing utilities seek to have separately processed subject to the prior notice requirements of the Federal Power Act, 16 U.S.C. 824d. The conference record indicates that all of the subject setttlement rates have been tendered in contemplation of Commission acceptance of the settlement package. All utilities who wish to have their Appendix A filings take effect immediately, shall notify the Commission within five days hereafter of that fact, and individual orders of suspension will be issued.

There are presently pending before the Commission in a number of dockets, petitions to intervene. They are granted as hereinafter ordered.

The Commission orders:

(A) All persons who are party to this proceeding may file written comments pertaining to the proposed settlement on or before May 20, 1974, with the Secretary of the Federal Power Commission, 825 North Capitol Street NE., Washington, D.C. 20426. Replies to the written comments may be filed with the Secretary of the Commission on or before June 5, 1974. The initial comments and replies thereto shall state the name, title, mailing address and telephone number of the person or persons to whom communications concerning this matter should be addressed. An original and fourteen (14) conformed copies of such comments and replies to such initial comments shall be filed with the Commission, and copies of the initial comments and replies thereto shall be served upon all persons who are parties to this proceeding.

(B) All comments and replies thereto filed in response to this notice shall be under oath, acknowledged by a notary public or comparable official as follows:

_____, being duly
(Name)

sworn, deposes and says that he is (title and organization, if filing is in a representative capacity) authorized to verify and file this document, that he has examined the statement contained in the initial comments or replies thereto, and that all such statements are true and correct to the best of his knowledge, information and belief.

The persons preparing the written comments and replies thereto shall submit such filings on letter size paper (8" by 10½" or 8½" by 11") in accordance with the rules of practice and procedure of the Federal Power Commission.

(C) All interested persons who are not now a party to this proceeding may become a party to this proceeding by filing a notice of intention to respond to this notice with the Secretary of the Commission on or before May 17, 1974. Such persons shall accept the record of these proceedings as it is presently constituted and shall limit their comments, and replies to the comments of the other parties, to the matter raised in this notice, the proposed settlement rates, charges, terms and conditions of the rate schedules proposed in these proceedings, and the comments submitted in response to this notice.

(D) The Secretary of the Commission shall cause prompt publication of this notice in the FEDERAL REGISTER and shall serve this notice upon all parties to these proceedings, and to the persons listed on Appendix B hereto.

(E) All persons listed in Appendix D as having filed petitions to intervene in one or more of these proceedings are hereby made parties to these proceedings.

(F) The prehearing conference now set for May 16, 1974, and all further proceedings in Docket Nos. E–8550, E–8565, E–8567, E–8591 and E–8614 (listed in Appendix C hereto), are hereby continued subject to the further order of the Commission.

By direction of the Commission.

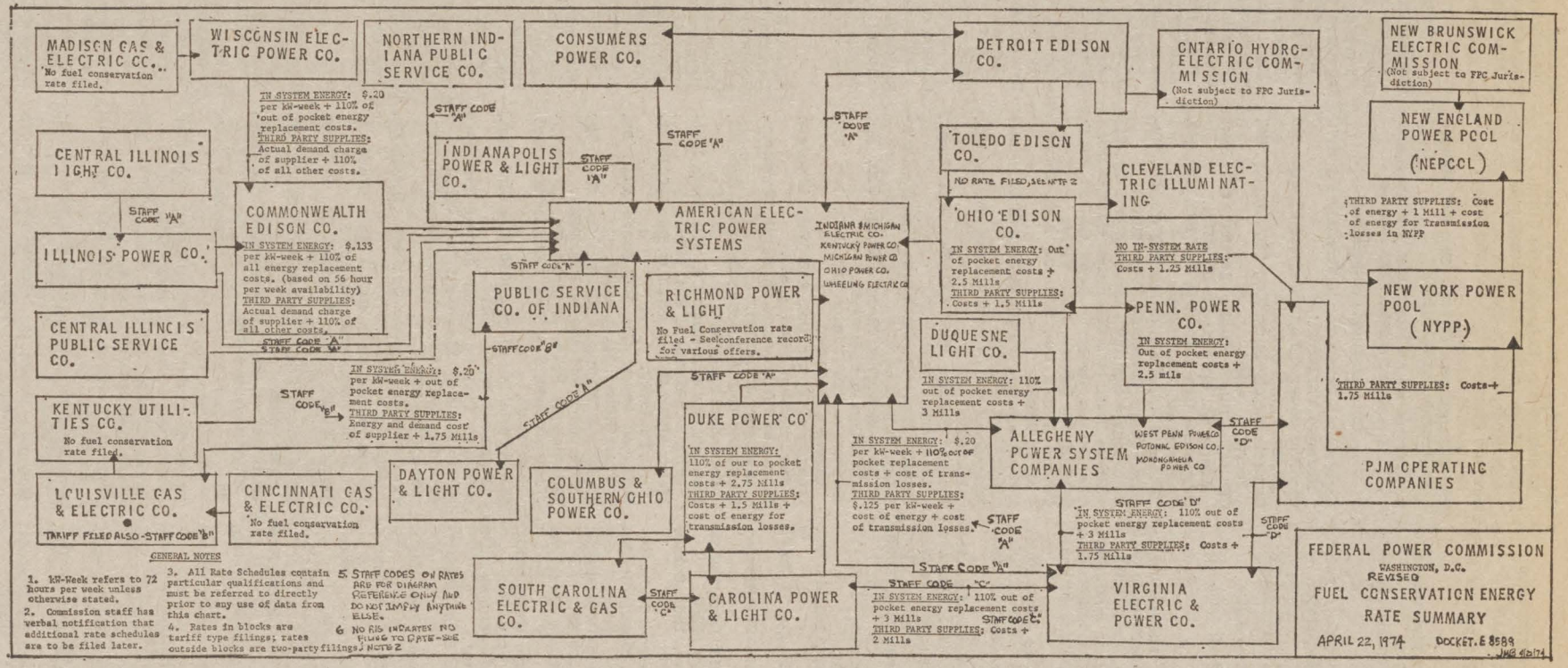
KENNETH F. PLUMB,
Secretary.

APPENDIX A

NEW ENGLAND POWER POOL PARTICIPANTS, ET AL.

Fuel Conservation Rate Schedules Diagrammatic Rate Summary of Rate Filings[1] Pursuant to Settlement Proposal in Docket No. E–8589

[1] Rate filing designations, by docket number, are listed in Appendix C hereto.


MADISON GAS & ELECTRIC CO.
No fuel conservation rate filed.
WISCONSIN ELECTRIC POWER CO.
NORTHERN INDIANA PUBLIC SERVICE CO.
CONSUMERS POWER CO.
DETROIT EDISON CO.
ONTARIO HYDRO-ELECTRIC COMMISSION
(Not subject to FPC Jurisdiction)
NEW BRUNSWICK ELECTRIC COMMISSION
(Not subject to FPC Jurisdiction)
NEW ENGLAND POWER POOL (NEPOOL)
IN SYSTEM ENERGY: $.20 per kW-week + 110% of out of pocket energy replacement costs.
THIRD PARTY SUPPLIES: Actual demand charge of supplier + 110% of all other costs.
STAFF CODE "A"
CENTRAL ILLINOIS LIGHT CO.
INDIANAPOLIS POWER & LIGHT CO.
TOLEDO EDISON CO.
NO RATE FILED, SEE NTF 2
CLEVELAND ELECTRIC ILLUMINATING
THIRD PARTY SUPPLIES: Cost of energy + 1 Mill + cost of energy for Transmission losses in NYPP
COMMONWEALTH EDISON CO.
IN SYSTEM ENERGY: $.133 per kW-week + 110% of all energy replacement costs. (based on 56 hour per week availability)
THIRD PARTY SUPPLIES: Actual demand charge of supplier + 110% of all other costs.
AMERICAN ELECTRIC POWER SYSTEMS
INDIANA & MICHIGAN ELECTRIC CO.
KENTUCKY POWER CO.
MICHIGAN POWER CO.
OHIO POWER CO.
WHEELING ELECTRIC CO.
OHIO EDISON CO.
IN SYSTEM ENERGY: Out of pocket energy replacement costs + 2.5 Mills
THIRD PARTY SUPPLIES: Costs + 1.5 Mills
NO IN-SYSTEM RATE
THIRD PARTY SUPPLIES: Costs + 1.25 Mills
ILLINOIS POWER CO.
PUBLIC SERVICE CO. OF INDIANA
RICHMOND POWER & LIGHT
No Fuel Conservation rate filed - See conference record for various offers.
NEW YORK POWER POOL (NYPP)
CENTRAL ILLINOIS PUBLIC SERVICE CO.
DUQUESNE LIGHT CO.
IN SYSTEM ENERGY: 110% out of pocket energy replacement costs + 3 Mills
PENN. POWER CO.
IN SYSTEM ENERGY: Out of pocket energy replacement costs + 2.5 mils
THIRD PARTY SUPPLIES: Costs + 1.75 Mills
IN SYSTEM ENERGY: $.20 per kW-week + out of pocket energy replacement costs.
THIRD PARTY SUPPLIES: Energy and demand cost of supplier + 1.75 Mills
KENTUCKY UTILITIES CO.
No fuel conservation rate filed.
DUKE POWER CO.
IN SYSTEM ENERGY: 110% of our to pocket energy replacement costs + 2.75 Mills
THIRD PARTY SUPPLIES: Costs + 1.5 Mills + cost of energy for transmission losses.
IN SYSTEM ENERGY: $.20 per kW-week + 110% out of pocket replacement costs + cost of transmission losses.
THIRD PARTY SUPPLIES: $.125 per kW-week + cost of energy + cost of transmission losses.
ALLEGHENY POWER SYSTEM COMPANIES
WEST PENN POWER CO.
POTOMAC EDISON CO.
MONONGAHELA POWER CO.
PJM OPERATING COMPANIES
LOUISVILLE GAS & ELECTRIC CO.
TARIFF FILED ALSO - STAFF CODE "B"
CINCINNATI GAS & ELECTRIC CO.
No fuel conservation rate filed.
DAYTON POWER & LIGHT CO.
COLUMBUS & SOUTHERN OHIO POWER CO.
IN SYSTEM ENERGY: 110% out of pocket energy replacement costs + 3 Mills
THIRD PARTY SUPPLIES: Costs + 1.75 Mills
SOUTH CAROLINA ELECTRIC & GAS CO.
CAROLINA POWER & LIGHT CO.
IN SYSTEM ENERGY: 110% out of pocket energy replacement costs + 3 Mills
THIRD PARTY SUPPLIES: Costs + 2 Mills
VIRGINIA ELECTRIC & POWER CO.
GENERAL NOTES
1. kW-Week refers to 72 Hours per week unless otherwise stated.
2. Commission staff has verbal notification that additional rate schedules are to be filed later.
3. All Rate Schedules contain particular qualifications and must be referred to directly prior to any use of data from this chart.
4. Rates in blocks are tariff type filings; rates outside blocks are two-party filings.
5. STAFF CODES ON RATES ARE FOR DIAGRAM REFERENCE ONLY AND DO NOT IMPLY ANYTHING ELSE.
6. NO RIS INDICATES NO FILING TO DATE - SEE NOTE 2
FEDERAL POWER COMMISSION
WASHINGTON, D.C.
REVISED
FUEL CONSERVATION ENERGY RATE SUMMARY
APRIL 22, 1974
DOCKET E 8589

APPENDIX B

NEW ENGLAND POWER POOL PARTICIPANTS

[Docket No. RM74–22, et al.]

Persons and parties served copies of this notice:

I. NEPOOL participants.
II. Systems to generate for and transmit energy to NEPOOL participants.
III. Systems to transmit energy to NEPOOL participants.
IV. Federal agencies.
V. Governors, resource agencies and public service commissions of affected states.
VI. Other organizations.

I. NEW ENGLAND POWER POOL PARTICIPANTS

[Docket No. RM74–22 et al.]

Organization name and address

New England Power Pool.
Single participants:
New England Power Co.; Massachusetts Electric Co.; Granite State Electric Co.; 20 Turnpike Rd., Westboro, Mass. 01581.
Fall River Electric Light Co.; Blackstone Valley Electric Co.; Brockton Edison Co.; Montaup Electric Co.; 225 Franklin St., Boston, Mass. 02107.
Cambridge Electric Light Co.; Canal Electric Co.; New Bedford Gas & Edison Light Co.; 130 Austin St., Cambridge, Mass. 02139.
The Connecticut Light & Power Co.; the Hartford Electric Light Co.; Western Massachusetts Electric Co.; Holyoke Water Power Co.; Holyoke Power & Electric Co.; P.O. Box 270, Hartford, Conn. 06101.
Vermont Electric Power Company, Inc.; 77 Grove St., Rutland, Vt. 05701.
Green Mountain Power Corp., 1 Main St., Burlington, Vt. 05401.
Central Vermont Public Service Co., 77 Grove St., Rutland, Vt. 05701.
Vermont Marble Co., 61 Main St., Proctor, Vt. 05765.
Village of Hardwick Electric Department, North Main St., Hardwick, Vt. 05843.
Vermont Electric Cooperative, Inc., School St., Johnson, Vt. 05656.
Village of Morrisville, Vt., Water & Light Department, 40 Portland St., Morrisville, Vt. 05661.
Village of Northfield Electric Department, 235 Main St., Northfield, Vt. 05663.
Washington Electric Cooperative, Inc., East Montpelier, Vt. 05651.
Village of Lyndonville Electric Department, 39 Depot St., Lyndonville, Vt. 05851.
Burlington Electric Light Department, 585 Pine St., Burlington, Vt. 05401.
Village of Johnson Water & Light Department, Johnson, Vt. 05656.
Village of Orleans Electric Department, Main St., Orleans, Vt. 05860.
Village of Readsboro Electric Department, Readsboro, Vt. 05350.
Village of Stowe Electric Department, Stowe, Vt. 05672.
Rochester Electric Light & Power Co., Rochester, Vt. 05767.
United Illumination Co., 80 Temple St., New Haven, Conn. 06500.
Boston Edison Co., 800 Boylston St., Boston, Mass. 02199.
Citizens Utilities Co., Ridgeway Center, Stamford, Conn. 06905.
Public Service Co. of New Hampshire, 1000 Elm St., Manchester, N.H. 03105.
Central Maine Power Co., 9 Green St., Augusta, Maine 04330.
Bangor Hydro-Electric Co., 33 State St., Bangor, Maine 04401.
Taunton Municipal Lighting Plant, 55 Weir St., Taunton, Mass. 02780.
Fitchburg Gas & Electric Light Department, 655 Main St., Fitchburg, Mass. 01420.
City of Holyoke Gas & Electric Department, 70 Suffolk Ave., Holyoke, Mass. 01040.
Hudson Light & Power Department, 49 Forest Ave., Hudson, Mass. 01749.
Newport Electric Corp., 45 Long Wharf Mall, Newport, R.I. 02840.
The Narragansett Electric Co., 280 Melrose St., Providence, R.I. 02901.

II. SYSTEMS TO GENERATE FOR AND TRANSMIT ENERGY TO NEPOOL PARTICIPANTS

Company name and address

Appalachian Power Co., 40 Franklin Rd. SW., Roanoke, Va. 24009.
Carolina Power & Light Co., 336 Fayetteville St., Raleigh, N.C. 27602.
Central Illinois Light Co., 300 Liberty St., Peoria, Ill. 61602.
Central Illinois Public Service, 607 East Adams St., Springfield, Ill. 62701.
Cincinnati Gas & Electric Co., P.O. Box 960, Cincinnati, Ohio 45201.
Cleveland Electric Illuminating Co., 55 Public Square, Cleveland, Ohio 44101.
Columbus & Southern Ohio Electric Co., 215 North Front St., Columbus, Ohio 43216.
The Dayton Power & Light Co., 25 North Main St., Dayton, Ohio 45401.
Detroit Edison Co., 2000 2d Ave., Detroit, Mich. 48226.
Duke Power Co., 422 South Church St., Charlotte, N.C. 28201.
Duquesne Light Co., 435 6th Ave., Pittsburgh, Pa. 15219.
Electric Energy, Inc., P.O. Box 165, Joppa, Ill. 62953.
Illinois Power Co., 500 South 27th St., Decatur, Ill. 62525.
Indiana-Kentucky Electric Corp., P.O. Box 468, Piketon, Ohio 45661.
Commonwealth Edison Co., P.O. Box 767, Chicago, Ill. 60690.
Consumers Power Co., 212 West Michigan Ave., Jackson, Mich. 49201.
Kentucky Utilities Co., 120 South Limestone, Lexington, Ky. 40507.
Louisville Gas & Electric Co., P.O. Box 354, Louisville, Ky. 40201.
Madison Gas & Electric Co., 100 North Fairchild St., Madison, Wis. 53701.
Metropolitan Edison Co., P.O. Box 542, Reading, Pa. 19603.
Michigan Power Co., 100 South Main St., Three Rivers, Mich. 49093.
Indiana & Michigan Electric Co., 2101 Spy Run Ave., Fort Wayne, Ind. 46801.
Indianapolis Power & Light Co., 25 Monument Circle, P.O. Box 1595, Indianapolis, Ind. 46206.
Monogahela Power Co., 1310 Fairmont Ave., Fairmont, W. Va. 26554.
Northern Indiana Public Service Co., 5265 Hohman Ave., Hammond, Ind. 46325.
Ohio Valley Electric Corp., P.O. Box 468, Piketon, Ohio 45661.
Pennsylvania Electric Co., 1001 Broad St., Johnstown, Pa. 15907.
Pennsylvania Power Co., 1 East Washington St., New Castle, Pa. 16103.
Pennsylvania Power & Light Co., 2 North 9th St., Allentown, Pa. 18101.
Ohio Edison Co., 47 North Main St., Akron, Ohio 44308.
Ohio Power Co., 301 Cleveland Ave. SW., Canton, Ohio 44702.
The Potomac Edison Co., Downsville Pike, Hagerstown, Md. 21740.
Public Service Co. of Indiana, Inc., 1000 East Main St., Plainfield, Ind. 46168.
South Carolina Electric & Gas Co., P.O. Box 764, Columbia, S.C. 29218.
Virginia Electric & Power Co., P.O. Box 26661, Richmond, Va. 23261.
West Penn Power Co., Cabin Hill, Greensburg, Pa. 15601.
Kentucky Power Co., Carter Ave. at 15th St., Ashland, Ky. 41101.
Wisconsin Electric Power Co., 231 West Michigan St., Milwaukee, Wis. 53201.
Toledo Edison Co., 300 Madison Ave., Toledo, Ohio 43652.

III. SYSTEMS TO TRANSMIT ENERGY TO NEPOOL PARTICIPANTS

Company name and address

Atlantic City Electric Co., 1600 Pacific Ave., Atlantic City, N.J. 08404.
Baltimore Gas & Electric Co., Gas and Electric Bldg., Baltimore, Md. 21203.
Delmarva Power & Light Co., 800 King St., Wilmington, Del. 19899.
Jersey Central Power & Light Co., New Jersey Power & Light Co., Madison Ave. at Punch Bowl Rd., Morristown, N.J. 07960.
Philadelphia Electric Co., 2301 Market St., Philadelphia, Pa. 19101.
Potomac Electric Power Co., Thomas Edison Bldg., 1900 Pennsylvania Ave., Washington, D.C. 20006.
Public Service Electric & Gas Co., 80 Park Place, Newark, N.J. 07101.
Consolidated Edison Co. of New York, Inc., 4 Irving Place, New York, N.Y. 10003.
Central Hudson Gas & Electric Corp., 284 South Ave., Poughkeepsie, N.Y. 12602.
Long Island Lighting Co., 250 Old Country Rd., Mineola, N.Y. 11501.
New York State Electric & Gas Corp., 4500 Vestall Parkway East, Binghamton, N.Y. 13902.
Niagara Mohawk Power Corp., 300 Erie Blvd. West, Syracuse, N.Y. 13202.
Orange & Rockland Utilities, Inc., 75 West Route 59, Spring Valley, N.Y. 10977.
Rochester Gas & Electric Corp., 89 East Ave., Rochester, N.Y. 14649.
Wheeling Electric Co., 51 16th St., Wheeling, W. Va. 26004.

IV. FEDERAL AGENCIES

Atomic Energy Commission.
Department of Justice.
Federal Energy Office.
Environmental Protection Agency.
Council on Environmental Quality.
Department of the Interior.
Interstate Commerce Commission.
General Services Administration.
Department of Transportation.

V. GOVERNORS, RESOURCE AGENCIES, AND PUBLIC SERVICE COMMISSIONS OF AFFECTED STATES

Wisconsin.
Michigan.
Illinois.
Indiana.
Ohio.
Vermont.
Maine.
New Hampshire.
Massachusetts.
Rhode Island.
Connecticut.
New York.
New Jersey.
Pennsylvania.
Delaware.
District of Columbia
West Virginia.
Maryland.
Kentucky.
Virginia.
Tennessee.
North Carolina.
South Carolina.

VI. OTHER ORGANIZATIONS

Organization name and address

East Central Area Reliability Council, P.O. Box 102, Canton, Ohio 44701.
Edison Electric Institute, 90 Park Ave., New York, N.Y. 10016.
Spiegel & McDiarmid, 2600 Virginia Ave., Washington, D.C. 20037.
Richmond Power & Light, P.O. Box 908, Richmond, Ind. 47374.
Oklahoma Gas & Electric, P.O. Box 321, Oklahoma City, Okla.
Tennessee Valley Authority, 721 Power Bldg., Chattanooga, Tenn. 37402.
The Ferroalloys Associations, 1612 K Street NW., Washington, D.C. 20006.
Ohio Ferro Alloys Association, P.O. Box 8228, Canton, Ohio 44711.

Electrical Week, 433 National Press Bldg., Washington, D.C. 20004.
General Motors Corp., c/o Shannon and Morley, 1700 K Street NW., Washington, D.C.
Knight Newspapers, 1195 National Press Bldg., Washington, D.C. 20004.
R. W. Beck & Associates, P.O. Box 68, Columbus, Nebr. 68601.
Office of Senator Claiborne Pell, Room 325, Russell Senate Office Bldg., Washington, D.C. 20510.
Southern Services, Inc., 600 North 18th St., Birmingham, Ala. 35202.
Alabama Power Co., 600 North 18th St., Birmingham, Ala. 35202.
Georgia Power Co., 270 Peachtree St., Atlanta, Ga. 30302.
Balch, Bingham, Baker, Hawthorne, Williams & Ward, Birmingham, Ala. 35202.
PJM Interconnection, 955 Jefferson Ave., Norristown, Pa. 19401.
New England Power Exchange, 174 Brush Hill Ave., West Springfield, Mass. 01089.
New York Power Pool, 5890 Cavman Rd., Schenectady, N.Y. 12303.
Oliphant Washington Service, 800 17th St. NW., Washington, D.C. 20006.
American Electric Power Service Corp., P.O. Box 487, Canton, Ohio 44702.
American Electric Power Service Corp., 2 Broadway, New York, N.Y. 10004.
General Public Utilities Service Corp., 260 Cherry Hill Rd., Parsippany, N.J. 07054.
LeBoeuf, Lamb, Leiby & MacRae, 1 Chase Manhattan Plaza, New York, N.Y. 10005.
Berlach, Israel, & Liberman, 26 Broadway, New York, N.Y. 10004.
City of Richmond, City Hall, Richmond, Ind. 47374.

APPENDIX C

NEW ENGLAND POWER POOL PARTICIPANTS

[Docket No: RM74-22 et al.]

Fuel conservation rate filings (revised Apr. 22, 1974)

Docket No.	Company	Designation	Filing date
E-8591	Ohio Power Co	Supplement No. 1 to supplement No. 16 to rate schedule FPC No. 36.	Apr. 9, 1974
	The Dayton Power & Light Co.	Supplement No. 1 to supplement No. 3 to rate schedule FPC No. 31.	Do.
E-8591	Indiana & Michigan Electric Co.	Supplement No. 4 to rate schedule FPC No. 68	Feb. 4, 1974
	Consumers Power Co	Supplement No. 4 to rate schedule FPC No. 23 (certificate of concurrence).	Do.
	The Detroit Edison Co	Supplement No. 8 to rate schedule FPC No. 12 (certificate of concurrence).	Do.
E-8591	Ohio Power Co	Supplement No. 6 to rate schedule FPC No. 32 (supersedes supplement No. 4).	Apr. 10, 1974
	Columbus & Southern Ohio Electric Co.	Supplement No. 6 to rate schedule FPC No. 7 (supersedes supplement No. 4).	Do.
E-8602	Indiana & Michigan Electric Co.	Supplement No. 1 to supplement No. 3 to rate schedule FPC No. 24.	Apr. 9, 1974
	Public Service Co. of Indiana, Inc.	Supplement No. 1 to supplement No. 3 to rate schedule FPC No. 49.	Do.
E-8614	Public Service Co. of Indiana, Inc.	Supplement No. 2 to supplement No. 6 to rate schedule FPC No. 208 (supersedes supplement No. 1 to supplement No. 6 to rate schedule FPC No. 208).	Mar. 29, 1974
	Louisville Gas & Electric Co.	Supplement No. 2 to supplement No. 1 to rate schedule FPC No. 21 (supersedes supplement No. 1 to supplement No. 1 to rate schedule FPC No. 21 and concurs in Public Service Co. of Indiana, Inc., supplement No. 2 to supplement No. 6 to rate schedule FPC No. 208).	Do.
E-8591	Ohio Power Co	Supplement No. 1 to supplement No. 16 to rate schedule FPC No. 36.	Apr. 9, 1974
	The Dayton Power & Light Co.	Supplement No. 1 to supplement No. 3 to rate schedule FPC No. 31.	Do.
E-8591	Indiana & Michigan Electric Co	Supplement No. 4 to rate schedule FPC No. 68	Feb. 4, 1974
	Consumers Power Co	Supplement No. 4 to rate schedule FPC No. 23 (certificate of concurrence).	Do.
	The Detroit Edison Co	Supplement No. 8 to rate schedule FPC No. 12 (certificate of concurrence).	Do.
E-8591	Ohio Power Co	Supplement No. 6 to rate schedule FPC No. 32 (supersedes supplement No. 4).	Apr. 10, 1974
	Columbus & Southern Ohio Electric Co.	Supplement No. 6 to rate schedule FPC No. 7 (supersedes supplement No. 4).	Do.
E-8602	Indiana & Michigan Electric Co.	Supplement No. 1 to supplement No. 3 to rate schedule FPC No. 24.	Apr. 9, 1974
	Public Service Co. of Indiana, Inc.	Supplement No. 1 to supplement No. 3 to rate schedule FPC No. 49.	Do.
E-8614	Public Service Co. of Indiana, Inc.	Supplement No. 2 to supplement No. 6 to rate schedule FPC No. 208 (supersedes supplement No. 1 to supplement No. 6 to rate schedule FPC No. 208).	Mar. 29, 1974
	Louisville Gas & Electric Co.	Supplement No. 2 to supplement No. 1 to rate schedule FPC No. 21 (supersedes supplement No. 1 to supplement No. 1 to rate schedule FPC No. 21 and concurs in Public Service Co. of Indiana, Inc., supplement No. 2 to supplement No. 6 to rate schedule FPC No. 208).	Do.
E-8614	Public Service Co. of Indiana, Inc.	Supplement No. 2 to supplement No. 6 to rate schedule FPC No. 208 (supersedes supplement No. 1 to supplement No. 6 to rate schedule FPC No. 208).	Mar. 29, 1974
	Louisville Gas & Electric Co.	Supplement No. 2 to supplement No. 1 to rate schedule FPC No. 21 (supersedes supplement No. 1 to supplement No. 1 to rate schedule FPC No. 21 and concurs in Public Service Co. of Indiana, Inc., supplement No. 2 to supplement No. 6 to rate schedule FPC No. 208).	Do.
E-8648	Duke Power Co	Rate schedule FPC No. 265	Mar. 4, 1974
E-8682	Wisconsin Electric Power Co.	Rate schedule FPC No. 34	Mar. 25, 1974
E-8699	West Penn Power Co	Supplement No. 6 to rate schedule FPC No. 18	Mar. 27, 1974
	The Potomac Edison Co	Supplement No. 6 to rate schedule FPC No. 26	Do.
	Monongahela Power Co	Supplement No. 6 to rate schedule FPC No. 22	Do.
	Public Service Electric & Gas Co.	Supplement No. 6 to rate schedule FPC No. 36	Do.
	Philadelphia Electric Co	Supplement No. 6 to rate schedule FPC No. 27	Do.
	Pennsylvania Power & Light Co.	Supplement No. 6 to rate schedule FPC No. 41	Do.
	Baltimore Gas & Electric Co.	Supplement No. 6 to rate schedule FPC No. 17	Do.
	Potomac Electric Power Co.	Supplement No. 6 to rate schedule FPC No. 21	Do.
	Pennsylvania Electric Co	Supplement No. 6 to rate schedule FPC No. 45	Do.
	Metropolitan Edison Co	Supplement No. 6 to rate schedule FPC No. 25	Do.
	Jersey Central Power & Light Co.	Supplement No. 6 to rate schedule FPC No. 21	Do.
E-8702	Central Hudson Gas & Electric Corp.	Rate schedule FPC No. 46	Do.
	Consolidated Edison Co. of New York, Inc.	Rate schedule FPC No. 30	Do.
	Long Island Lighting Co	Rate schedule FPC No. 17	Do.
	New York State Electric & Gas Corp.	Rate schedule FPC No. 58	Do.
	Niagara Mohawk Power Corp.	Rate schedule FPC No. 80	Do.
	Orange & Rockland Utilities, Inc.	Rate schedule FPC No. 26	Do.
	Rochester Gas & Electric Corp.	Rate schedule FPC No. 14	Do.
	Public Service Electric Gas Co.	Rate schedule FPC No. 50	Do.
	Philadelphia Electric Co	Rate schedule FPC No. 40	Do.
	Pennsylvania Power & Light Co.	Rate schedule FPC No. 64	Do.
	Baltimore Gas & Electric Co.	Rate schedule FPC No. 27	Do.
	Potomac Electric Power Co.	Rate schedule FPC No. 30	Do.
	Pennsylvania Electric Co	Rate schedule FPC No. 71	Do.
	Metropolitan Edison Co	Rate schedule FPC No. 44	Do.
	Jersey Central Power & Light Co.	Rate schedule FPC No. 33	Do.
E-8704	Virginia Electric & Power Co.	Supplement No. 2 to rate schedule FPC No. 73	Mar. 28, 1974
	Baltimore Gas & Electric Co.	Supplement No. 2 to rate schedule FPC No. 18	Do.
	Philadelphia Electric Co	Supplement No. 2 to rate schedule FPC No. 28	Do.
	Pennsylvania Electric Co	Supplement No. 2 to rate schedule FPC No. 48	Do.
	Pennsylvania Power & Light Co.	Supplement No. 2 to rate schedule FPC No. 43	Do.
	Potomac Electric Power Co.	Supplement No. 2 to rate schedule FPC No. 23	Do.
	Metropolitan Edison Co	Supplement No. 2 to rate schedule FPC No. 28	Do.
	Jersey Central Power & Light Co.	Supplement No. 2 to rate schedule FPC No. 23	Do.
	Public Service Electric & Gas Co.	Supplement No. 2 to rate schedule FPC No. 37	Do.
E-8706	Commonwealth Edison Co.	Rate schedule FPC No. 15	Mar. 29, 1974
E-8708	Central Hudson Gas & Electric Corp.	Rate schedule FPC No. 47	Do.
	Consolidated Edison Co. of New York, Inc.	Rate schedule FPC No. 31	Do.
	Long Island Lighting Co	Rate schedule FPC No. 18	Do.

Docket No.	Company	Designation	Filing date
	New York State Electric & Gas Corp.	Rate schedule FPC No. 59	Do.
	Niagara Mohawk Power Corp.	Rate schedule FPC No. 81	Do.
	Orange & Rockland Utilities, Inc.	Rate schedule FPC No. 27	Do.
	Rochester Gas & Electric Corp.	Rate schedule FPC No. 15	Do.
	NEPOOL	Rate schedule FPC No. 1	Do.
E-8710	Ohio Edison Co	Rate schedule FPC No. 118	Apr. 19, 1974.
E-8711	West Penn Power Co	Supplement No. 6 to rate schedule FPC No. 24	Do.
	Duquesne Light Co	Supplement No. 6 to rate schedule FPC No. 9 (certificate of concurrence).	Apr. 5, 1974.
E-8715	Carolina Power & Light Co.	Supplement No. 7 to rate schedule FPC No. 97	Do.
	South Carolina Electric & Gas Co.	Supplement No. 2 to rate schedule FPC No. 29	Do.
E-8716	Illinois Power Co	Supplement No. 5 to rate schedule FPC No. 9	Apr. 4, 1974.
	Indiana & Michigan Electric Co.	Supplement No. 6 to rate schedule FPC No. 3	Do.
E-8718	Central Illinois Public Service Co.	Rate schedule FPC No. 76	Apr. 8, 1974.
E-8719	Indianapolis Power & Light Co.	Supplement No. 5 to rate schedule FPC No. 1	Apr. 5, 1974.
	Indiana & Michigan Electric Co.	Supplement No. 7 to rate schedule FPC No. 21	Do.
E-8720	Carolina Power & Light Co.	Supplement No. 2 to rate schedule FPC No. 96	Do.
	Virginia Electric & Power Co.	Supplement No. 7 to rate schedule FPC No. 95 (certificate of concurrence).	Do.
E-8722	The Cleveland Electric Illuminating Co.	Supplement No. 2 to rate schedule FPC No. 4	Do.
	Public Service Electric & Gas Co.	Supplement No. 2 to rate schedule FPC No. 38	Do.
	Philadelphia Electric Co	Supplement No. 2 to rate schedule FPC No. 29	Do.
	Pennsylvania Power & Light Co.	Supplement No. 2 to rate schedule FPC No. 44	Do.
	Baltimore Gas & Electric Co.	Supplement No. 2 to rate schedule FPC No. 19	Do.
	Potomac Electric Power Co.	Supplement No. 2 to rate schedule FPC No. 24	Do.
	Pennsylvania Electric Co	Supplement No. 2 to rate schedule FPC No. 49	Do.
	Metropolitan Edison Co	Supplement No. 2 to rate schedule FPC No. 29	Do.
	Jersey Central Power & Light Co.	Supplement No. 2 to rate schedule FPC No. 24	Do.
E-8725	Louisville Gas & Electric Co.	Rate schedule FPC No. 26	Apr. 10, 1974.
E-8726	Central Illinois Light Co	Supplement No. 1 to rate schedule FPC No. 14	Apr. 11, 1974.
	Illinois Power Co	Supplement No. 8 to rate schedule FPC No. 63 (certificate of concurrence).	Do.
E-8727	Pennsylvania Power Co	Rate schedule FPC No. 28	Apr. 12, 1974.

APPENDIX D

NEW ENGLAND POWER POOL PARTICIPANTS

[Docket No. RM74-22, *et al.*]

Intervention Petitions [2]

Docket No. E-8550: New England Power Pool Participants (granted by order of January 11, 1974); Virginia State Corporation Commission; Virginia Electric and Power Company; West Virginia Public Service Commission; Long Island Lighting Company; Richmond Power & Light Company; and City of Richmond, Indiana; and General Motors Corporation; Michael J. Harrington, Member of Congress, 6th District, Massachusetts;

Docket No. E-8565: New England Power Pool Participants;

Docket No. E-8567: New England Power Pool Participants;

Docket No. E-8589: Potomac Electric Power Company; Virginia State Corporation Commission; Public Service Electric and Gas Company; Baltimore Gas and Electric Company; Richmond Power & Light Company; and Iowa State Commerce Commission; Honorable Michael J. Harrington, Member of Congress, 6th District, Massachusetts;

Docket No. E-8591: New England Power Pool Participants; and Consumers Power Company;

Docket No. E-8602: Richmond Power & Light Company.

[FR Doc.74-10399 Filed 5-7-74;8:45 am]

[2] All applicants, petitioners, respondents and customers required to file pursuant to section 35 of the Commission's Regulations under the Federal Power Act listed in Appendix hereto, are deemed parties in these proceedings.

[Docket No. E-8726]

CENTRAL ILLINOIS LIGHT CO.

Modification of Interconnection Agreement

MAY 1, 1974.

Take notice that on April 11, 1974, Central Illinois Light Company (Applicant) filed, pursuant to section 35 of the Commission's regulations, a modification to the Interconnection Agreement, dated March 30, 1973, between Applicant and Illinois Power Company. Said Interconnection Agreement has been designated as Applicant's Rate Schedule FPC No. 14 and as Illinois Power Company Rate Schedule FPC No. 63. The modification tendered in this application deals with efforts by the parties toward conservation of fuel.

Service Schedule G in the tendered filing provides for the delivery of "Fuel Conservation Power and Energy" when such service is requested by one party and is available from the supplying party. The application states that neither company has a rate similar to the one set forth in Service Schedule G, and further states that this new rate was arrived at by negotiation.

The proposed effective date for Service Schedule G is April 3, 1974 and the Applicant requests a waiver of the Commission's notice requirements, pursuant to § 35.11 of the regulations.

Illinois Power 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 Commisison'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 participates 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.74-10478 Filed 5-7-74;8:45 am]

[Docket No. CP74-267]

COLORADO INTERSTATE GAS CO.

Notice of Application

MAY 1, 1974.

Take notice that on April 18, 1974, Colorado Interstate Gas Company, a division of Colorado Interstate Corporation (Applicant), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP74-267 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon certain gas purchase facilities in Arapahoe County, Colorado, all as more fully set forth in the application, which is on file with the Commission and open to public inspection.

Applicant proposes to abandon and salvage natural gas purchase meter stations and lateral pipelines at the Bombing Range, Iron Horse and Dragoon II Fields, Arapahoe County, Colorado, which, Applicant states, were constructed pursuant to authority granted by budget-type certificates issued on June 1, 1972 (47 FPC 1439), May 7, 1971 (45 FPC 928), and March 9, 1973 (49 FPC 633), respectively. Applicant states that these facilities are no longer required by Applicant, since Sun Oil Company (Sun) has acquired the rights to all the gas produced from the associated acreage and will process the gas through its Denver Central Plant. Applicant states that it has installed a measurement facility and approximately 0.53 miles of lateral pipeline pursuant to a budget type certificate issued on March 9, 1973 (49 FPC 633), in order to receive said gas at Sun's plant.

In connection with the receipt of gas at a central location, Applicant intends to sell to Sun gathering lines, and dehyject to the jurisdiction of the Commission, with a book value of $84,564, connected to the Herskind No. 1 and Schmidt No. 1 Wells, which wells Sun is currently operating.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 24, 1974, file with the Federal Power Com-

mission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds permission and approval for the proposed abandonment are required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.74-10479 Filed 5-7-74;8:45 am]

[Docket No. CP74-269]

COLUMBIA GAS TRANSMISSION CORP.

Notice of Application

MAY 1, 1974.

Take notice that on April 19, 1974, Columbia Gas Transmission Corporation (Applicant), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314 filed in Docket No. CP74-269 an application pursuant to sections 7 (b) and (c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of a natural gas transmission loop replacement pipeline and an increase in the volumes of natural gas exchanged by it with Washington Gas Light Company (Washington Gas), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to construct and operate approximately 8.4 miles of 36-inch gas transmission pipeline loop in Loudoun County, Virginia, replacing approximately 20.1 miles of existing 26-inch gas transmission pipeline, which has experienced failures during operation and testing, in the same county.[1] Applicant alleges that the capacity of the proposed line is sufficient to replace the loss in capacity due to the retirement of the 20.1 miles of pipeline and that the new capacity will be sufficient to permit the proposed increase in service to Washington Gas.

Applicant states that it was authorized by the Commission in Docket No. CP71-198 on April 26, 1971 (45 FPC 600), to provide an exchange service to Washington Gas pursuant to a letter agreement between Washington Gas and Applicant dated December 15, 1970, which agreement is on file with the Commission as Applicant's Rate Schedule X-30 in its FPC Gas Tariff, Original Volume No. 2. Applicant indicates that it receives 35,000 Mcf of gas per day from Washington Gas' subsidiary, Hampshire Gas Company, at Applicant's Lost River Compressor Station in Hardy County, West Virginia, and that Applicant simultaneously delivers equivalent volumes to Washington Gas at existing points of delivery in Washington Gas' market area. Applicant states that Washington Gas has requested that Applicant increase the existing exchange service from 35,000 Mcf of gas per day to 50,000 Mcf of gas per day. Applicant indicates that it is willing to provide the expanded service to Washington Gas and indicates that the terms and conditions of the new exchange detailed under an April 9, 1974, agreement between Applicant and Washington Gas will be identical to the existing agreement except for the volumes exchanged. The application states that no change is contemplated in the basis of Applicant's charges to Washington Gas and that the identical unit rate is maintained and applied to the proposed increase in exchange volumes.

Applicant estimates that the cost of the proposed construction, including Commission filing fees is $2,710,000, which cost will be financed by the sale of securities to Applicant's parent company, Columbia Gas System, Inc. Applicant also indicates that the estimated net debit to retirement due to the proposed retirement of the 20.1 miles of 26-inch pipeline will be $1,468,105.

Any person desiring to be heard or to make any protest with reference to said application 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) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and permission and approval for the proposed abandonment are required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.74-10480 Filed 5-7-74;8:45 am]

[1] The application indicates that 21,634 feet of 26-inch pipe will be removed, 32,777 feet of 26-inch pipe will be utilized in place as ground bed, and the remaining 51,458 feet of 26-inch pipe will be retired in place.

[Docket No. CI74-565]

CORPENING ENTERPRISES

Notice of Application

MAY 1, 1974.

Take notice that on April 12, 1974, A. V. Corpening, Jr., d/b/a Corpening Enterprises (Applicant), 1308 Continental National Bank Building, Fort Worth, Texas 76102, filed in Docket No. CI74-565 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce to Northern Natural Gas Company (Northern) from Gaines County, Texas, all as more fully set forth in an application which is on file with the Commission and open to public inspection.

Applicant states that it began an emergency sale of gas to Northern from subject gathering facilities on March 14, 1974, for 180 days within the contemplation of § 157.29 of the regulations under the Natural Gas Act (18 CFR 157.29) and proposes to continue said sale after the emergency period for a term of one year at 45.0 cents per Mcf at 14.65 psia, subject to upward and downward Btu adjustment, within the contemplation of § 2.70 of the Commission's general policy and interpretations (18 CFR 2.70). Applicant proposes to sell up to 2,000 Mcf of gas per day and estimates monthly gas sales to be 60,000 Mcf.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 21, 1974, file with the Federal Power Com-

mission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds a grant of the certificate 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.74-10477 Filed 5-7-74;8:45 am]

[Docket No. CI74-564]

DALLAS OIL & GAS, INC.

Notice of Application

MAY 1, 1974.

Take notice that on April 12, 1974, Dallas Oil & Gas, Inc. (Applicant), Suite 101, 2995 L.B.J. Freeway, Dallas, Texas 75234, filed in Docket No. CI74-564 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale for resale of natural gas in interstate commerce to Trunkline Gas Company (Trunkline) from the Scott Field, Wharton County, Texas, all as more fully set forth in the application, which is on file with the Commission and open to public inspection.

Applicant states that it began an emergency sale of natural gas from the subject acreage to Trunkline on February 8, 1974, for 180 days within the contemplation of § 157.29 of the regulations under the Natural Gas Act (18 CFR 157.29) and proposes to continue said sale after the emergency period for one year at 55.0 cents per Mcf at 14.65 psia within the contemplation of § 2.70 of the Commission's general policy and interpretations (18 CFR 2.70). Applicant estimates monthly deliveries of gas to Trunkline at 90,000 Mcf.

Any person desiring to be heard or to make any protest with reference to said application 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.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.74-10481 Filed 5-7-74;8:45 am]

[Docket No. E-8744]

DELMARVA POWER AND LIGHT CO.

Change in Rate Schedule

MAY 1, 1974.

Take notice that on April 22, 1974 Delmarva Power and Light Company (Delmarva) tendered for filing a change in rate schedule. Delmarva states that its five percent rate increase is due to the Delaware five percent utilities tax which became effective January 1, 1974 for sales to Delaware municipalities made under Delmarva's FPC Electric Tariff, Volume No. 4, and Rate Schedule FPC No. 35, Supplement No. 1. Delmarva states that the Delaware Utilities Tax will accordingly require an increase in charges to its customers from and after January 1, 1974 in an amount necessary to recover such additional tax.

As provided in the "Tax Provision" clause in FPC Electric Tariff, Volume No. 4 and FPC Rate Schedule No. 35, Supplement No. 1, all billings to Delmarva wholesale for resale customers under such tariff and such rate schedule are increased by 5 percent, the amount of the tax. This amount is remitted upon collection, in its totality, to the State of Delaware.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 15, 1974. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 74-10482 Filed 5-7-74;8:45 am]

[Docket No. CI74-580]

GETTY OIL CO.

Notice of Application

MAY 1, 1974.

Take notice that on March 29, 1974, Getty Oil Company (Applicant), P.O. Box 1404, Houston, Texas 77001, filed in Docket No. CI74-580 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon the sale of natural gas in interstate commerce to Skelly Oil Company (Skelly) from acreage in Lea County, New Mexico, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it proposes to abandon the sale of gas to Skelly from the Blinebry, et al., Field, in Lea County, New Mexico, which has been made pursuant to a percentage-type contract with Skelly. Applicant states that as oil wells, the casinghead gas therefrom is dedicated to Skelly and as gas wells, the gas-well gas is not dedicated to Skelly. Applicant states that it proposes to abandon the subject sale because the New Mexico Oil Conservation Commission has reclassified the wells from oil wells to gas wells; and, therefore, Skelly is no longer contractually entitled to the gas from said wells.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 24, 1974, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate

action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.74-10483 Filed 5-7-74;8:45 am]

[Rate Schedule Nos. 59, etc.]

TENNECO OIL CO. AND MONSANTO CO.

Rate Change Filings

MAY 1, 1974.

Take notice that the producers listed in the Appendix attached below have filed proposed increased rates to the applicable area new gas ceiling based on the interpretation of vintaging concepts set forth by the Commission in its Opinion No. 639, issued December 12, 1972.

The information relevant to each of these sales is listed in the Appendix.

Any person desiring to be heard or to make any protest with reference to said filings should on or before May 24, 1974, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any party wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

KENNETH F. PLUMB,
Secretary.

APPENDIX

Filing date	Producer	Rate schedule No.	Buyer	Area
Apr. 11, 1974	Tenneco Oil Co., P.O. Box 2511, Houston, Tex. 77001.	59	Arkansas Louisiana Gas Co.	Other Southwest.
Apr. 15, 1974	do	52	do	Do.
Do	do	105	do	Do.
Apr. 22, 1974	Monsanto Co., 1300 Post Oak Tower, 5051 Westheimer, Houston, Tex. 77027.	45	Tennessee Gas Pipeline Co.	Texas Gulf Coast.

[FR Doc.74-10496 Filed 5-7-74;8:45 am]

[Docket No. E-8365]

KANSAS CITY POWER & LIGHT CO.

Filing of Motion To Accept Settlement Agreement

MAY 1, 1974.

Take notice that on April 26, 1974, Kansas City Power and Light Company (KCPL) filed in the above-referenced docket a Motion requesting that the Commission (a) accept a Settlement Agreement, and (b) issue an Order (i) accepting and putting into effect the revised schedules conditionally filed with the Commission's Secretary, and (ii) terminating the proceedings in this docket without further conferences or hearings herein. According to KCPL, the settlement agreement entered into with KCPL's cooperative wholesale customers, with the approval of the Commission's staff, would resolve all issues between KCPL and the parties to these proceedings. Under such settlement agreement and the revised schedules conditionally filed therewith, KCPL's proposed $743,773 increase in annual revenues based on sales to wholesale customers during the 12-month test period ended December 31, 1972, would be reduced to $530,819.

Any party to these proceedings desiring to protest such motion and settlement agreement should file comments or protests with the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with § 1.10 of the Commission's rules of practice and procedure (18 CFR 1.10). All such comments or protests should be filed on or before May 15, 1974. Protests will be considered by the Commission in determining the appropriate action to be taken. Copies of the motion, the settlement agreement, and the revised schedules are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.74-10485 Filed 5-7-74;8:45 am]

[Docket No. CI74-568]

LOUISIANA LAND AND EXPLORATION CO.

Notice of Application

MAY 1, 1974.

Take notice that on April 12, 1974, The Louisiana Land and Exploration Company (Applicant), P.O. Box 60350, New Orleans, Louisiana 70160, filed in Docket No. CI74-568 an application pursuant to section 7(c) of the Natural Gas Act and § 2.75 of the Commission's general policy and interpretations (18 CFR 2.75) for a certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce to Texas Eastern Transmission Company (Texas Eastern), from Block 321, East Cameron Area, offshore Louisiana, all as more fully set forth in an application which is on file with Commission and open to public inspection.

Applicant proposes under the optional gas pricing procedure to sell approximately 60,000 Mcf of gas per month at an initial rate of 60 cents per Mcf at 15.025 psia, subject to upward and downward Btu adjustment, pursuant to a contract dated January 28, 1974. Said contract provides for fixed annual price escalations of 2 cents per Mcf over the 20-year life of the contract and for 7/8ths reimbursement for any new or increased taxes. Applicant requests pregranted abandonment authorization.

Applicant states that the sale is of critical importance in assisting Texas Eastern to meet the firm demands for gas on its system during the contract term, and that the contract price is lower than prices for base load sales of liquefied natural gas or synthetic gas and prices for peak shaving sales of LNG for which applications for authorization are pending before, or have been approved by, the Commission.

Any person desiring to be heard or to make any protest with reference to said application 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.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own re-

view of the matter finds 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.74-10486 Filed 5-7-74;8:45 am]

[Docket No. CI74-575]

MESA PETROLEUM CO.

Notice of Application

MAY 1, 1974.

Take notice that on April 18, 1974, the Mesa Petroleum Co. (Applicant), P.O. Box 2009, Amarillo, Texas 79105, filed in Docket No. CI74-575 an application pursuant to section 7(c) of the Natural Gas Act and § 2.75 of the Commission's general policy and interpretations (18 CFR 2.75) for a certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce to Transcontinental Gas Pipe Line Corporation (Transco) from the Block 22-L Field, High Island Area, offshore Jefferson County, Texas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to sell under the optional gas pricing procedure natural gas to Transco from the subject acreage at an initial price of 45.0 cents per Mcf at 14.65 psia. The contract for the subject sale dated April 16, 1974, provides for 0.5 cent per Mcf per year price escalations, reimbursement to seller of 87.5 percent of any new or additional taxes, and a contract term of 20 years from the date of initial delivery. Applicant estimates sales volumes will be 5,000 Mcf per day.

Applicant states that the contract price is lower than prices in recently executed and certificated interstate contracts and low in comparison wih recent intrastate contract prices and is, therefore, a bargain for the interstate market. Applicant further states that Transco and its customers would be forced to pay considerably more for alternate or substitute fuels.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 24, 1974 file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.74-10487 Filed 5-7-74;8:45 am]

[Docket No. CP72-279]

NATURAL GAS PIPELINE COMPANY OF AMERICA

Amendment to Petition

MAY 1, 1974.

Take notice that on April 18, 1974, Natural Gas Pipeline Company of America (Petitioner), 122 South Michigan Avenue, Chicago, Illinois 60603, filed in Docket No. CP72-279 an amendment to its petition to amend the order of the Commission issued pursuant to section 7(c) of the Natural Gas Act in said docket on December 6, 1972 (48 FPC 1206), as amended October 9, 1973 (50 FPC), to delete the Town of Corn, Oklahoma (Corn), from the list of participating customers in the storage service described in said petition to amend, due notice of which was given by the Commission in the FEDERAL REGISTER on February 15, 1974 (39 FR 5818), all as more fully set forth in the amendment to the petition to amend, which is on file with the Commission and open to public inspection.

In the instant amendment Petitioner is deleting Corn from among those customers participating in Petitioner's 100-day storage service of 59,100 Mcf of gas per day, provided under Petitioner's FPC Rate Schedule S-3, which service Petitioner proposes to continue until February 28, 1975. Petitioner states that Corn has declined the storage service due to financial circumstances. Petitioner further intends to reallocate Corn's share of 18 Mcf per day to the following customers:

	Thousand cubic feet
The Peoples Gas Light & Coke Co.	13
North Shore Gas Co.	2
Illinois Power Co.	2
Iowa Electric Light & Power Co.	1
Total	18

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) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc.74-10488 Filed 5-7-74;8:45 am]

[Docket No. E-8641, etc.]

NEW ENGLAND POWER CO.

Order Upon Petition for Emergency Relief; Correction

APRIL 25, 1974.

In the Order upon petition for emergency relief, suspending proposed changes in rates, setting matter for hearing, consolidating proceedings and permitting interventions, issued March 29, 1974 and published in the FEDERAL REGISTER, April 8, 1974, 39 FR 12794, page 12795, third paragraph, line 14 change "April 30, 1974" to "September 1, 1974".

KENNETH F. PLUMB,
Secretary.

[FR Doc.74-10490 Filed 5-7-74;8:45 am]

[Docket No. E-8742]

NEW YORK STATE ELECTRIC AND GAS CORP.

Amendment to Agreement

APRIL 30, 1974.

Take notice that on April 17, 1974, New York State Electric and Gas Corporation (NYSEG) tendered for filing a letter agreement, dated February 21, 1974, which constitutes an amendment to its agreement, NYSEG FPC 48, dated March 12, 1970, among NYSEG, Port Authority of the State of New York, Niagara Mohawk Power Corporation and Rochester Gas and Electric Corporation. NYSEG states the said amendment extends the terms of the said agreement to November 1, 1974. According to NYSEG, the said agreement provides for the sale by NYSEG, Niagara

Mohawk and Rochester Gas and Electric to the Power Authority of the State of New York of up to 200,000 kilowatts of power for supplying specified high load factor manufacturers.

NYSEG requests an effective date of April 1, 1974, for said amendment.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 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.74-10489 Filed 5-7-74;8:45 am]

[Docket Nos. CP70-69, etc., RP74-80]

NORTHERN NATURAL GAS CO.

Petition to Amend

MAY 1, 1974.

Take notice that on April 19, 1974, Northern Natural Gas Company (Petitioner), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP70-69, et al., a petition to amend the order accompanying Opinion No. 618 issued in said dockets on May 11, 1972 (47 FPC 1202), pursuant to section 3 of the Natural Gas Act, which order authorized Applicant to export natural gas to Canada from Montana and to import gas from Canada, by authorizing Petitioner to include in its cost of service an amount derived upon the basis of a lesser volume of exported gas, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

The importation authorized by the subject order is subject to the condition that in any rate filing made by Petitioner pursuant to section 4(e) of the Natural Gas Act for an increase in jurisdictional rates to become effective within eight years from the date of initial delivery of Montana gas, Petitioner shall not include in its total cost of service a cost of service for Montana gas delivered into the system of Trans Canada Pipe Lines Ltd. (Trans Canada) which, calculated on a unit basis, exceeds the unit cost of service derived by utilizing an annual delivered volume of 41 million Mcf, minus estimated company use gas, at the point where gas is introduced into Trans Canada's system. Petitioner requests that it no longer be subject to this condition.

Petitioner states that the projected delivery of 41 million Mcf of natural gas from its Montana reserves has not occurred as expected because of the inadequate rate of drilling, which is due to the lack of incentive supplied the producers under the present area rate of 23.5 cents per Mcf and because of inadequate production history that had to be used in predicting the output for the Tiger Ridge Field, which is Petitioner's principal area of reserves in Montana. Petitioner submits that in 1973 production from the Montana reserves dedicated to Petitioner was 29 million Mcf and that testimony by Petitioner in support of its rate filing in Docket No. RP74-80 will reflect production of 26 million Mcf for 1974. Petitioner further states that it has contracted to increase the base price for natural gas delivered at the wellhead in the Tiger Ridge-Bullhook and Sherard Areas of Montana to 40 cents per Mcf.

Petitioner requests a hearing on the instant petition and further requests that this matter be consolidated with the proceeding on the change in rate proposed in Docket No. RP74-80.

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), and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc.74-10491 Filed 5-7-74;8:45 am]

[Docket No. E-8739]

OKLAHOMA GAS AND ELECTRIC CO.

Cancellation of Rate Schedule

APRIL 30, 1974.

Take notice that on April 16, 1974 Oklahoma Gas and Electric Company (Oklahoma) tendered for filing notice of cancellation Rate Schedule Supplement No. 16 to FPC No. 21A, dated December 30, 1973. Oklahoma states the above mentioned Rate Schedule shall be completed under the provisions of its own terms on May 31, 1974.

Oklahoma proposes an effective date of May 31, 1974 for said cancellation.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 10, 1974. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of the filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.74-10492 Filed 5-7-74;8:45 am]

[Docket No. E-8741]

POTOMAC ELECTRIC POWER CO. AND SOUTHERN MARYLAND ELECTRIC COOPERATIVE, INC.

Notice of Complaint

MAY 1, 1974.

Take notice that on April 18, 1974, Potomac Electric Power Company (PEPCO) filed with the Commission a complaint against Southern Maryland Electric Cooperative, Inc. (SMECO) pursuant to section 206 of the Federal Power Act, and supporting testimony and exhibits, seeking a determination that the present rates for sale of electric energy to SMECO are unjust and unreasonable because they are so low as to adversely affect the public interest. PEPCO states that the present rates to SMECO are fixed by a full requirements contract entered into in 1963 which cannot expire by process of its own terms before August 1978. PEPCO alleges that the rate of return from sales to SMECO in calendar 1973, 1.41 percent, and in calendar 1974, —.57 percent, are so low as to adversely affect the public interest because they result in confiscation of PEPCO property. PEPCO further alleges that the contract rates are unjust, unreasonable, unduly preferential and discriminatory, and unlawful in that they result in the sale of energy significantly below cost at the time of energy emergency declared by this Commission.

Any person desiring to be heard or to protest said complaint should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE, Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 20, 1974. Protests will be considered by the Commisison 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.74-10493 Filed 5-7-74;8:45 am]

[Docket No. CI74-581]

SKELLY OIL CO.

Notice of Application

MAY 1, 1974.

On April 1, 1974, Skelly Oil Company (Applicant), P.O. Box 1650, Tulsa, Okla-

homa 74102, filed in Docket No. CI74–581 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon a sale of natural gas in interstate commerce in Winkler County, Texas, to Texaco Inc. (Texaco), 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 proposes to abandon the sale of gas to Texaco from the South Kermit Field, Winkler County, Texas, which has been made pursuant to a percentage-type contract with Texaco. Applicant states that as oil wells, the casinghead gas therefrom is dedicated to Texaco, and as gas wells the gas-well gas is not dedicated to Texaco. Applicant states that it proposes to abandon the subject sale because the Texas Railroad Commission has reclassified the wells from oil wells to gas wells; and, therefore, Texaco is no longer contractually entitled to the gas from the subject acreage. Applicant states that it is currently negotiating with Transwestern Pipeline Company (Transwestern), the purchaser of the residue gas from Texaco an agreement under which it can sell the gas-well gas to Transwestern initially within the contemplation of § 157.29 of the regulations under the Natural Gas Act (18 CFR 157.29) and then within contemplation of § 2.70 of the Commission's general policy and interpretations (18 CFR 2.70).

Any person desiring to be heard or to make any protest with reference to said application should on or before May 24, 1974, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.74–10494 Filed 5–7–74;8:45 am]

[Docket No. E–8743]

ST. JOSEPH LIGHT & POWER CO.

Notice of Rate Schedule

MAY 1, 1974.

Take notice that on April 18, 1974, St. Joseph Light and Power Company (St. Joseph) tendered for filing as an initial rate schedule a Power Flow Agreement dated December 31, 1968, between St. Joseph and Iowa Power and Light Company.

St. Joseph states the said Agreement provides for the transformation of electric energy from 345 KV to 161 KV at the St. Joseph Substation and the transmission of this energy to a point of interconnection between the parties at the Iowa-Missouri State Line. St. Joseph further states the charges for such service for a one-year period immediately following the commencement of service are estimated to be $49,200 payable in monthly installments.

St. Joseph proposes an effective date of June 1, 1974, for said Agreement.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE, Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 15, 1974. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.74–10495 Filed 5–7–74;8:45 am]

[Docket No. CI74–569]

TEXACO INC.

Notice of Application

MAY 1, 1974.

Take notice that on April 15, 1974, Texaco Inc. (Applicant), P.O. Box 430, Bellaire, Texas 77401, filed in Docket No. CI74–569 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 Natural Gas Pipeline Company of America (Natural) from the Block 88 Field, High Island Area, offshore Texas, all as more fully set forth in an application which is on file with the Commission and open to public inspection.

Applicant proposes to sell to Natural approximately 20,000 Mcf of gas per day for one year commencing May 31, 1974, at 45.0 cents per million Btu at 14.65 psia within the contemplation of § 2.70 of the Commission's general policy and interpretations (18 CFR 2.70).

Any person desiring to be heard or to make any protest with reference to said application 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.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds 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.74–10497 Filed 5–7–74;8:45 am]

[Docket No. CI74–573]

UNION OIL COMPANY OF CALIFORNIA

Notice of Application

MAY 1, 1974.

Take notice that on April 18, 1974, Union Oil Company of California (Applicant), P.O. Box 7600, Los Angeles, California 90051, filed in Docket No. CI74–573 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 Texas Gas Transmission Corporation (Texas Gas), from the R. Parker Well No. 1, East Angelita Area, San Patricio County, Texas, all as more fully set forth in the application, which is on file with the Commission and open to public inspection.

Applicant states that it commenced a sixty-day emergency sale of natural gas to Texas Gas from said well within the

contemplation of § 157.29 of the regulations under the Natural Gas Act (18 CFR 157.29) and proposes to continue said sale for three years from the end of the emergency period at 70.0 cents per Mcf at 14.65 psia, subject to upward and downward Btu adjustment from a base of 1,000 Btu per cubic foot within the contemplation of § 2.70 of the Commission's general policy and interpretations (18 CFR 2.70). Applicant estimates monthly deliveries of gas to Texas Gas at 54,000 Mcf.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 24, 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 protestant parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.74-10498 Filed 5-7-74;8:45 am]

IMPORTATION AND PRICE OF NATURAL GAS UNDER EXPORT FROM DOMINION OF CANADA

Notice of Public Conference

MAY 3, 1974.

A public conference between members of the Federal Power Commission staff and representatives of Northwest Pipeline Corporation, Great Lakes Gas Transmission Company, Midwestern Gas Transmission Corporation, Michigan-Wisconsin Pipeline Company, Natural Gas Pipeline Company of American and Pacific Gas Transmission Company will be held in a Hearing Room at the Federal Power Commission offices, 825 North Capitol Street, NE., Washington, D.C., on Friday, May 10, 1974, at 9:30 A.M. to discuss the importation and price of natural gas under export from the Dominion of Canada.

The conference has been called pursuant to a request of Northwest Pipeline Corporation (Northwest). Northwest states that it has contacted representatives of present holders of Section 3 import authorizations, including Great Lakes Gas Transmission Company, Midwestern Gas Transmission, Michigan-Wisconsin Pipeline Company, Natural Gas Pipeline Company of America, and Pacific Gas Transmission Company, and that these representatives either support or have no objection to the convening of such a conference. Northwest also states that it has undertaken to notify each of its customers and state regulatory commissions and has solicited the cooperation of each of the above-named companies in doing the same.

KENNETH F. PLUMB,
Secretary.

[FR Doc.74-10646 Filed 5-7-74;8:45 am]

INTERSTATE COMMERCE COMMISSION

[Notice No. 502]

ASSIGNMENT OF HEARINGS

MAY 2, 1974.

Cases assigned for hearing, postponement, cancellation or oral argument appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the Official Docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponements of hearings in which they are interested. No amendments will be entertained after May 8, 1974.

MC-F-11626, Eastern Freight Ways, Inc.—Investigation of Control—Associated Transport, Inc., now assigned May 13, 1974, at Washington, D.C., is postponed to June 24, 1974, at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC-F-11632, Eastern Freight Ways, Inc.—Control and Merger—Associated Transport, Inc., now assigned May 13, 1974, at Washington, D.C., is postponed to June 24, 1974, at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 138926 Sub 2, Gencom, Inc., now assigned June 11, 1974, will be held in Room 609, Federal Office Bldg., 911 Walnut St., Kansas City, Mo.

MC 133777 Sub-8, Metal Carriers, Inc., now assigned June 17, 1974; MC 135874 Sub-31, LTL Perishables, Inc., now assigned June 19, 1974; and I & S No. 8930, Export Rates to Gulf Ports, Burlington Northern Inc., now assigned June 24, 1974, at Kansas City, Mo., will be held in Room 609, Federal Office Building, 911 Walnut St.

MC-F-12038, Arrow Motor Freight Line, Inc.—Control & Merger—Rite-Way Trucking Co., now assigned June 5, 1974, will be held in Room 609, Federal Office Bldg., 911 Walnut Street, Kansas City, Mo.

MC 111231 Sub 183, Jones Truck Lines, Inc., now assigned June 12, 1974, will be held in Room 609, Federal Office Bldg., 911 Walnut St., Kansas City, Mo.

MC 114632 Sub 65, Apple Lines, Inc., now assigned June 10, 1974, will be held in Room 609, Federal Office Bldg., 911 Walnut St., Kansas City, Mo.

MC 128981 Sub 7, Land-Air Delivery, Inc., now assigned June 3, 1974, will be held in Room 609, Federal Office Bldg., 911 Walnut St., Kansas City, Mo.

Valuation Docket No. 1423 (1971 Report), Williams Brothers Pipeling Company now assigned pre-hearing conference May 15, 1974, at Washington, D.C., is postponed indefinitely.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.74-10504 Filed 5-7-74;8:45 am]

FOURTH SECTION APPLICATION FOR RELIEF

MAY 2, 1974.

An application, as summarized below, has been filed requesting relief from the requirements of Section 4 of the Interstate Commerce Act to permit common carriers named or described in the application to maintain higher rates and charges at intermediate points than those sought to be established at more distant points.

Protests to the granting of an application must be prepared in accordance with Rule 40 of the general rules of practice (49 CFR 1100.40) and filed on or before May 23, 1974.

FSA No. 42830—*Fruits and Vegetables Between Points in Colorado and Utah and Points in WTL, Official, Southern and Southwestern Territories.* Filed by Western Trunk Line Committee, Agent, (No. A-2703), for interested rail carriers. Rates on fruits, fresh, or vegetables, fresh or green (not cold-pack nor frozen), in carloads, as described in the application, between points in Colorado and Utah (west of ICC Docket 28300 Boundary), on the one hand, and points in western trunk-line, official, southern and southwestern territories, on the other.

Grounds for relief—Market competition, modified short-line distance formula and grouping.

Tariffs—Western Trunk Line Committee, Agent, tariff 491, I.C.C. No. A-4927, and supplement 57 to Southwestern Freight Bureau, Agent, tariff SW/W-2006-J, I.C.C. No. 5056. Rates are published to become effective on May 31, 1974.

By the Commission.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.74-10506 Filed 5-7-74;8:45 am]

[Rule 19, Ex Parte No. 241; 16th Rev. Exemption No. 43]

ATCHISON, TOPEKA AND SANTA FE RAILWAY CO. ET AL.

Mandatory Car Service Exemption

To: The Atchison, Topeka and Santa Fe Railway Company; Burlington North-

ern Inc.; Chicago and North Western Transportation Company; Chicago, Milwaukee, St. Paul and Pacific Railroad Company; Chicago, Rock Island and Pacific Railroad Company; Illinois Central Gulf Railroad Company; Missouri Pacific Railroad Company; Norfolk and Western Railway Company; St. Louis-San Francisco Railway Company; Soo Line Railroad Company; Union Pacific Railroad Company.

It appearing, That there are massive movements of grain, including rice and soybeans, in progress in the states of Arkansas, Iowa, Kansas, Minnesota, Mississippi, Missouri, Montana, Nebraska, North Dakota, Oklahoma, South Dakota, and Texas, and of cotton in certain of the aforementioned states; that present supplies of plain boxcars owned by the railroads serving these states are inadequate to move the newly harvested grain and cotton to terminal facilities for safe storage; that use of available plain boxcars owned by other carriers for movements of this grain and cotton will substantially augment the car supplies of the railroads named herein.

It is ordered, That pursuant to the authority vested in me by Car Service Rule 19, the railroads named herein, and their short line connections, are hereby authorized to use and to accept from shippers shipments of grain and cotton originating at stations located in Arkansas, Iowa, Kansas, Minnesota, Mississippi, Missouri, Montana, Nebraska, North Dakota, Oklahoma, South Dakota, and Texas, when loaded into plain 40-ft. narrow-door boxcars of various ownerships without regard to the requirements of Car Service Rule 2.

Exception. This exemption shall not apply to plain boxcars subject to *Interstate Commerce Commission Revised Service Order No. 1174, or to Association of American Railroads' Car Relocation Directives Nos. 44 and 67; *nor to plain boxcars bearing reporting marks assigned to The Atchison, Topeka, and Santa Fe Railway Company, the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, or the Soo Line Railroad Company.

Effective 12:01 a.m., April 25, 1974.

Expires 11:59 p.m., May 31, 1974.

Issued at Washington, D.C., April 25, 1974.

INTERSTATE COMMERCE COMMISSION,
[SEAL] R. D. PFAHLER,
Agent.

[FR Doc.74-10500 Filed 5-7-74;8:45 am]

[Rule 19, Ex Parte No. 241; Exemption No. 63, Amdt. 1]

BESSEMER AND LAKE ERIE RAILROAD CO. AND PENN CENTRAL TRANSPORTATION CO.

Mandatory Car Service Exemption

To: Bessemer and Lake Erie Railroad Company and Penn Central Transportation Company, George P. Baker, Robert W. Blanchette, and Richard C. Bond, Trustees.

Upon further consideration of Exemption No. 63 issued February 12, 1974.

It is ordered, That, under authority vested in me by Car Service Rule 19, Exemption No. 63 to the Mandatory Car Service Rules ordered in Ex Parte No. 241 be, and it is hereby, amended to expire July 31, 1974.

This amendment shall become effective April 30, 1974.

Issued at Washington, D.C., April 30, 1974.

INTERSTATE COMMERCE COMMISSION,
[SEAL] R. D. PFAHLER,
Agent.

[FR Doc.74-10501 Filed 5-7-74;8:45 am]

[Rule 19, Ex Parte No. 241; Exemption No. 56, Amdt. 4]

ERIE LACKAWANNA RAILWAY CO. AND PENN CENTRAL TRANSPORTATION CO.

Mandatory Car Service Exemption

To: Erie Lackawanna Railway Company, Thomas F. Patton and Ralph S. Tyler, Jr., Trustees. Penn Central Transportation Company, George P. Baker, Robert W. Blanchette, and Richard C. Bond, Trustees.

Upon further consideration of Exemption No. 56 issued October 31, 1973.

It is ordered, That, under authority vested in me by Car Service Rule 19, Exemption No. 56 to the Mandatory Car Service Rules ordered in Ex Parte No. 241 be, and it is hereby, amended to expire July 31, 1974.

This amendment shall become effective April 30, 1974.

Issued at Washington, D.C., April 24, 1974.

INTERSTATE COMMERCE COMMISSION,
[SEAL] R. D. PFAHLER,
Agent.

[FR Doc.74-10503 Filed 5-7-74;8:45 am]

[Rule 19, Ex Parte No. 241; Exemption No. 55, Amdt. 4]

NORFOLK AND WESTERN RAILWAY CO. AND PENN CENTRAL TRANSPORTATION CO.

Mandatory Car Service Exemption

To: Norfolk and Western Railway Company and Penn Central Transportation Company, George P. Baker, Robert W. Blanchette, and Richard C. Bond, Trustees.

Upon further consideration of Exemption No. 55, issued October 31, 1973.

It is ordered, That, under authority vested in me by Car Service Rule 19, Exemption No. 55 to the Mandatory Car Service Rules ordered in Ex Parte No. 241 be, and it is hereby, amended to expire July 31, 1974.

This amendment shall become effective April 30, 1974.

Issued at Washington, D.C., April 26, 1974.

INTERSTATE COMMERCE COMMISSION,
[SEAL] R. D. PFAHLER,
Agent.

[FR Doc.74-10499 Filed 5-7-74;8:45 am]

[I.C.C. Order No. 88, Amdt. 5; Rev. Service Order No. 994]

PENN CENTRAL TRANSPORTATION CO.

Rerouting Traffic

Upon further consideration of I.C.C. Order No. 88 (Penn Central Transportation Company, George P. Baker, Robert W. Blanchette, and Richard C. Bond, Trustees) and good cause appearing therefor:

It is ordered, That:

I.C.C. Order No. 88 be, and it is hereby, amended by substituting the following paragraph (g) for paragraph (g) thereof:

(g) *Expiration date.* This order shall expire at 11:59 p.m., October 31, 1974 unless otherwise modified, changed, or suspended.

It is further ordered, That this amendment shall become effective at 11:59 p.m., April 30, 1974, and that this order shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association; and that it be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., April 30, 1974.

INTERSTATE COMMERCE COMMISSION,
[SEAL] R. D. PFAHLER,
Agent.

[FR Doc.74-10502 Filed 5-7-74;8:45 am]

[Notice No. 74]

MOTOR CARRIER BOARD TRANSFER PROCEEDINGS

Synopses of orders entered by the Motor Carrier Board of the Commission pursuant to sections 212(b), 206(a), 211, 312(b), and 410(g) of the Interstate Commerce Act, and rules and regulations prescribed thereunder (49 CFR Part 1132), appear below:

Each application (except as otherwise specifically noted) filed after March 27, 1972, contains a statement by applicants that there will be no significant effect on the quality of the human environment resulting from approval of the application. As provided in the Commission's special rules of practice any interested person may file a petition seeking reconsideration of the following numbered proceedings on or before May 27, 1974. Pursuant to section 17(8) of the Interstate Commerce Act, the filing of such a petition will postpone the effective date of the order in that proceeding pending its disposition. The matters relied upon by

*Addition

petitioners must be specified in their petitions with particularity.

No. MC–FC–75017. By order entered May 1, 1974, the Motor Carrier Board approved the transfer to P & G Motor Express, Inc., St. Louis, Ill., of the operating rights set forth in Certificate No. MC–60879, issued December 3, 1963, to F. T. Trucking Co., Inc., East St. Louis, Ill., authorizing the transportation of general commodities, with the usual exceptions, between Marine, Ill., and St. Louis, Mo., over specified routes, serving the intermediate and off-route points of Troy and Saint Jacob, Ill., and those within one mile of Troy, Ill.; those within one mile of Saint Jacob, Ill.; and those within five miles of Marine, Ill. Ernest A. Brooks II, 1301–02 Ambassador Building, St. Louis, Mo. 63101, attorney for applicants.

No. MC–FC–75068. By order entered May 1, 1974, the Motor Carrier Board approved the transfer to Evans Trucking Co., an Ohio corporation, Beaver Falls, Pa. of the operating rights set forth in Certificates Nos. MC–52464 and MC–52464 (Sub-No. 3), issued August 15, 1967, and August 17, 1970, respectively, to Evans Trucking Co., a Pennsylvania Corporation, Beaver Falls, Pa., authorizing the transportation of iron and steel articles, machinery, electrical equipment, iron castings, and empty reels used in transporting wire, sand, general commodities, with the usual exceptions, alloys and alloy scrap, scrap ferro-alloys and ferro-alloy fines, refractories, crucibles, grinding wheels, refractory cements and alloys, scrap refractory materials and scrap grinding-wheel materials, and abrasive grains, from, to, or between points in Maryland, Michigan, New York, Ohio, Pennsylvania, and West Virginia. David A. Turano, 100 East Broad Street, Columbus, Ohio 43215, attorney for applicants.

No. MC–FC–75080. By order entered May 1, 1974, the Motor Carrier Board approved the tarnsfer to Computer Specialists, North Bergen, N.J. of the operating rights set forth in Certificate No. MC–41688, issued December 3, 1969, to Thompson Brothers Moving, Inc., North Hackensack, N.J., authorizing the transportation of household goods as defined by the Commission, between points in Bergen, Passaic, Hudson, Union, Essex, and Morris Counties, N.J., on the one hand, and, on the other, points in New Jersey, New York, Pennsylvania, Connecticut, Massachusetts, Ohio, Maryland, and the District of Columbia. Robert B. Pepper, 168 Woodbridge Ave., Highland Park, N.J. 08904, practitioner for applicants.

No. MC–FC–75092. By order entered May 1, 1974, the Motor Carrier Board approved the transfer to Donald W. Kamann, doing business as Bigfork Valley Express, Bigfork, Minn., of the operating rights set forth in Certificate of Registration No. MC–85522 (Sub-No. 1), issued July 23, 1964, to Clarence York, Sr., doing business as Bigfork Valley Express, Bigfork, Minn., evidencing a right to engage in transportation in interstate or foreign commerce of freight between specified points in Minnesota. F. H. Kroeger, 1745 University Ave., St. Paul, Minn. 55104, practitioner for applicants.

No. MC–FC–75093. By order of April 30, 1974, the Motor Carrier Board approved the transfer to Bay Area-Los Angeles Express, Inc., San Francisco, Calif., of a portion of Certificate of Registration No. MC–71920 (Sub-No. 6), issued July 28, 1965, to Progressive Transportation Company, a corporation, Compton, Calif., evidencing the authority to perform a transportation service in interstate or foreign commerce corresponding in scope to that portion of the intrastate authority granted in Decision No. 61309 dated January 4, 1961, as amended by Decision No. 63045 dated January 9, 1962, by the Public Utilities Commission of the State of California which authorized the transportation of general commodities between all points in the Los Angeles Basin Territory on the one hand, and, on the other, points in the San Francisco Territory, with certain restrictions. Mr. Donald Murchison, Attorney at Law, 9454 Wilshire Boulevard, Suite 400, Beverly Hills, Calif. 90212.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.74–10505 Filed 5–7–74;8:45 am]

IRREGULAR-ROUTE MOTOR COMMON CARRIERS OF PROPERTY-ELIMINATION OF GATEWAY LETTER NOTICES

MAY 2, 1974.

The following letter-notices of proposals to eliminate gateways for the purpose of reducing highway congestion, alleviating air and noise pollution, minimizing safety hazards, and conserving fuel have been filed with the Interstate Commerce Commission under the Commission's Gateway Elimination rules (49 CFR 1065(a)), and notice thereof to all interested persons is hereby given as provided in such rules.

An original and two copies of protests against the proposed elimination of any gateway herein described may be filed with the Interstate Commerce Commission on or before May 20, 1974. A copy must also be served upon applicant or its representative. Protests against the elimination of a gateway will not operate to stay commencement of the proposed operation.

Successively filed letter-notices of the same carrier under these rules will be numbered consecutively for convenience in identification. Protests, if any, must refer to such letter-notices by number.

No. MC–11207 (Sub-No. E–4), filed April 28, 1974. APPLICANT: Deaton, Inc., P.O. Box 938, Birmingham, Alabama 35201. Applicant's representative: C. N. Knox (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Plywood*, from points in Manatee County, Fla., to points in Oklahoma and Texas. The purpose of this filing is to eliminate the gateway of Taylorsville, Miss.

No. MC–41404 (Sub-No. E1), filed April 22, 1974. APPLICANT: Argo-Collier Truck Lines Corp., P.O. Box 440, Martin, Tenn. 38237. Applicant's representative: Mark L. Horne (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Bananas*, from Charleston, S.C., to Chicago, Ill., and points in Illinois within 200 miles of Chicago, with no transportation for compensation on return except as otherwise authorized. The purpose of this filing is to eliminate the gateway of Atlanta, Ga.

No. MC–52657 (Sub-No. E2), filed April 19, 1974. APPLICANT: Arco Auto Carriers, Inc., 2140 West 79th Street, Chicago, Ill. 60620. Applicant's representative: S. J. Zangri (same as above). Authority sought to operate as a *common carrier*, by motor vehcile, over irregular routes, transporting: (1) *refuse containers* (except those having a capacity of 5 gallons or less, or those having a capacity of 9 cubic feet or less, only when moving in mixed shipments with bodies or hoists or both), from Exeter, Pa., to points in the United States on and west of the Mississippi River, including Alaska but excluding Hawaii, and points in Illinois, Minnesota, and Wisconsin, restricted against the transportation of refuse containers which because of size or weight require the use of special equipment; (2) *freight containers*, from Lansdale, Pa., to points in California, Oregon, and Washington; and (3) *new foreign-made automobiles* in secondary movements in truckaway service, (a) from Naperville, Ill., to points in Connecticut, Delaware, Florida, Georgia, Kansas, Louisiana, Maine, Maryland, Massachusetts, Montana, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Rhode Island, South Carolina, South Dakota, Utah, Vermont, Virginia, Wyoming, and the District of Columbia; (b) from Naperville, Ill., to points in Alabama, on and south of a line beginning at the Alabama-Georgia State line near Cedartown, Ga., over U.S. Highway 411 to junction U.S. Highway 278 at Gadsden, Ala., thence over U.S. Highway 278 to junction U.S. Highway 11, thence over U.S. Highway 11 via Birmingham, Ala., to junction Interstate Highways 59 and 20, thence over Interstate Highways 59 and 20 to junction U.S. Highway 82, thence over U.S. Highway 82 via Tuscaloosa, Ala., to the Alabama-Mississippi State line; (c) from Naperville, Ill., to points in Arkansas south of a line beginning at the Oklahoma-Arkansas State line near Ft. Smith, Ark., along the Arkansas River to the Mississippi River near Rosedale, Miss.; and Russellville, Ark.; (d) from Naperville, Ill., to points in Mississippi on and south of a line beginning at the Arkansas-Mississippi State line near Rosedale, Miss., east over Mississippi Highway 8 to junction U.S. Highway 278, thence over U.S. Highway 278 to the Mississippi-Alabama State line near Sulligent, Ala.; (e) from Naperville, Ill., to points in Nebraska on and west of a line beginning at the Nebraska-South Dakota State line near Anoka, Nebr., south over Nebraska Highway 11 to junc-

tion Nebraska Highway 70, thence over Nebraska Highway 58 to junction Nebraska Highway 58, thence south over Nebraska Highway 58 to junction Nebraska Highway 10, thence over Nebraska Highway 10 to the Kansas-Nebraska State line near Franklin, Nebr.; (f) from Naperville, Ill., to points in Pennsylvania on and east of a line beginning at the Pennsylvania-New York State line south over U.S. Highway 62 to junction Pennsylvania Highway 948, thence over Pennsylvania Highway 948 to junction Pennsylvania Highway 66, thence west over Pennsylvania Highway 66 to junction Pennsylvania Highway 899, thence south over Pennsylvania Highway 899 to junction Pennsylvania Highway 36, thence over Pennsylvania Highway 36 to junction U.S. Highway 119, thence southwest over U.S. Highway 119 to junction U.S. Highway 70, thence over U.S. Highway 70 to junction Pennsylvania Highway 51, thence south over Pennsylvania Highway 51 to junction U.S. Highway 119, thence over U.S. Highway 119 to the Pennsylvania-West Virginia State line near Point Marion, Pa.; (g) from Walbridge, Ohio, to points in Louisiana (except those points east of a line beginning at the Mississippi-Louisiana State line south along the Amite River to junction Louisiana Highway 22 near Head of Island, La., thence west over Louisiana Highway 22 to the Mississippi River, thence along the Mississippi River to junction Louisiana Highway 20 near Vacherie, La., thence south over Louisiana Highway 20 to junction U.S. Highway 90 at Gibson, La., thence west over U.S. Highway 90 to the Lower Atchafalaya River near Amelia, La., thence south along the Lower Atchafalaya River to the Gulf of Mexico), Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming; and (h) from Columbus, Ohio, to points in Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming. The purpose of this filing is to eliminate the gateway of Lima, Ohio, in (1); Ft. Wayne, Ind., in (2); and Kenosha, Wis., in (3).

No. MC–65941 (Sub-No. E 4), filed April 11, 1974. APPLICANT: Tower Lines, Inc., P.O. Box 6010, Wheeling, W. Va. 26003. Applicant's representative: George W. Thieroff (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Electrical equipment and fixtures*, from points in that part of Pennsylvania bounded by a line beginning at the Ohio-Pennsylvania State line, thence along U.S. Highway 422 to Pennsylvania Highway 66, thence along Pennsylvania Highway 66 to U.S. Highway 119, thence along U.S. Highway 119 to the Pennsylvania-West Virginia State line, thence along the Pennsylvania-West Virginia State line to the Pennsylvania-Ohio State line, thence along the Pennsylvania-Ohio State line to point of beginning including points on the indicated portions of the highways specified to points in that part of Georgia on and north of a line beginning at a point east of Savannah on the Atlantic Coast and extending along U.S. Highway 50 to junction U.S. Highway 280, thence along U.S. Highway 280 to the Georgia-Alabama State line, and south of a line beginning at Augusta, Ga., and extending along U.S. Highway 1 to Louisville, Ga., thence along Georgia Highway 24 to junction Georgia Highway 22, thence along Georgia Highway 22 to Macon, Ga., and thence along U.S. Highway 80 to the Georgia-Alabama State line. The purpose of this filing is to eliminate the gateway of Glen Dale, W. Va.

No. MC–65941 (Sub-No. E6), filed April 11, 1974. APPLICANT: Tower Lines, Inc., P.O. Box 6010, Wheeling, W. Va. 26003. Applicant's representative: George V. Thieroff (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Empty compressed-gas cylinders*, from points in North Carolina and South Carolina on, north, and west of U.S. Highway 1, and points in Georgia on, and, north, of a line extending from the Atlantic Ocean along U.S. Highway 80 to junction U.S. Highway 280 thence along U.S. Highway 280 to the Georgia-Alabama State line to points in that part of Pennsylvania bounded by a line beginning at the Ohio-Pennsylvania state line, thence along U.S. Highway 422 to Pennsylvania Highway 66, thence along Pennsylvania Highway 66 to U.S. Highway 119, thence along U.S. Highway 119 to the Pennsylvania-West Virginia state line, thence along the Pennsylvania-West Virginia state line to the Pennsylvania-Ohio state line, thence along the Pennsylvania-Ohio state line to point of beginning including points on the indicated portions of the highways specified. The purpose of this filing is to eliminate the gateway of Natrium, W. Va.

No. MC–95540 (Sub-No. E 36), filed April 15, 1974. APPLICANT: Watkins Motor Lines, Inc., P.O. Box 1636, Atlanta, Ga. 30301. Applicant's representative: Clyde W. Carver, Suite 212 5299 Rosewell Road NE., Atlanta, Ga. 30342. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, and meat by-products*, as described in Section A of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except commodities in bulk, in tank vehicles), from Dade City, Fla., to points in Colorado. The purpose of this filing is to eliminate the gateway of Tifton, Ga.

No. MC–95540 (Sub-No. E 37), filed April 15, 1974. APPLICANT: Watkins Motor Lines, Inc., P.O. Box 1636, Atlanta, Ga. 30301. Applicant's representative: Clyde W. Carver, Suite 212, 5299 Roswell Road NE., Atlanta, Ga. 30342. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, and meat by-products*, as described in Section A of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except commodities in bulk, in tank vehicles), from Dade City, Fla., to points in Tennessee. The purpose of this filing is to eliminate the gateway of Tifton, Ga.

No. MC–95540 (Sub-No. E 49), filed April 15, 1974. APPLICANT: Watkins Motor Lines, Inc., P.O. Box 1636, Atlanta, Ga. 30301. Applicant's representative: Clyde W. Carver, Suite 212, 5299 Roswell Rd. NE., Atlanta, Ga. 30342. Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: *Meats, meat products, and meat by-products*, as described in Section A of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except commodities in bulk, in tank vehicles), from Dade City, Fla., to points in Massachusetts. The purpose of this filing is to eliminate the gateway of Tifton, Ga.

No. MC–95540 (Sub-No. E 50), filed April 15, 1974. APPLICANT: Watkins Motor Lines, Inc., P.O. Box 1636, Atlanta, Ga. 30301. Applicant's representative: Clyde W. Carver, Suite 212, 5299 Roswell Rd. NE., Atlanta, Ga. 30342. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen fruits and frozen vegetables*, from points in Florida on and east of U.S. Highway 319 to points in Oklahoma. The purpose of this filing is to eliminate the gateway of Tifton, Ga., and Florence, Ala.

No. MC–95540 (Sub-No. E51), filed April 15, 1974. APPLICANT: Watkins Motor Lines, Inc., P.O. Box 1636, Atlanta, Ga. 30301. Applicant's representative: Clyde W. Carver, Suite 212, 5299 Roswell Rd. NE., Atlanta, Ga. 30342. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen fruits and frozen vegetables*, from points in Florida to points in Montana. The purpose of this filing is to eliminate the gateway of Tifton, Ga., and points in Tennessee.

No. MC–95540 (Sub-No. E61), filed April 16, 1974. APPLICANT: Watkins Motor Lines, Inc., P.O. Box 1636, Atlanta, Ga. 30301. Applicant's representative: Clyde W. Carver, Suite 212, 5299 Roswell Rd. NE., Atlanta, Ga. 30342. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, and meat byproducts*, as described in Section A of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except commodities in bulk, in tank vehicles), from Dade City, Fla., to points in Connecticut. The purpose of this filing is to eliminate the gateway of Tifton, Ga.

No. MC–95540 (Sub-No. E62), filed April 16, 1974. Applicant: Watkins Motor Lines, Inc., P.O. Box 1636, Atlanta, Ga. 30301. Applicant's representative: Clyde W. Carver, Suite 212, 5299 Roswell Rd. NE., Atlanta, Ga. 30342. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, and meat by-products*, as described in Section A of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except commodities in bulk,

in tank vehicles), from Dade City, Fla., to points in Kentucky. The purpose of this filing is to eliminate the gateway of Tifton, Ga.

No. MC–95540 (Sub-No. E63), filed April 16, 1974. Applicant: Watkins Motor Lines, Inc., P.O. Box 1636, Atlanta, Ga. 30301. Applicant's representative: Clyde W. Carver, Suite 212, 5299 Roswell Rd. NE., Atlanta, Ga. 30342. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, and meat by-products*, as described in Section A of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except commodities in bulk, in tank vehicles), from Dade City, Fla., to points in Mississippi. The purpose of this filing is to eliminate the gateway of Tifton, Ga.

No. MC–112822 (Sub-No. E1), filed April 12, 1974. Applicant: Bray Lines, Inc., P.O. Box 1191, Cushing, Okla. 74023. Applicant's representative: Robert A. Stone (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Dairy products*, from points in Wisconsin (except Belleville, Wis.) to points in Arizona, California, Colorado, Nevada, New Mexico, Oregon, Utah, and Washington. The purpose of this filing is to eliminate the gateway of points in Iowa or Nebraska.

No. MC–112822 (Sub-No. E2), filed April 12, 1974. Applicant: Bray Lines, Inc., P.O. Box 1191, Cushing, Okla. 74023. Applicant's representative: Robert A. Stone (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (a) *Canned foods*, from Springdale, Ark., and points in Arkansas within 50 miles of Springdale to points in California and Nevada. The purpose of this filing is to eliminate the gateway of Delta, Colo. (b) *Dairy products*, from points in Washington to points in Arkansas, Iowa, Louisiana, Mississippi, Missouri, and Tennessee. The purpose of this filing is to eliminate the gateway of points in Minnesota.

No. MC–112822 (Sub-No. E3), filed April 19, 1974. APPLICANT: Bray Lines, Inc., P.O. Box 1191, Cushing, Okla. 74023. Applicant's representative: Robert A. Stone (same as above). Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: *Canned goods*, from Muskogee, Okla., to points in California and Nevada. The purpose of this filing is to eliminate the gateway of Delta, Colorado.

No. MC–112822 (Sub-No. E4), filed April 19, 1974. APPLICANT: Bray Lines, Inc., P.O. Box 1191, Cushing, Okla. 74023. Applicant's representative: Robert A. Stone (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Canned fruits and vegetables*, from Stilwell, Okla., to points in California and Nevada. The purpose of this filing is to eliminate the gateway of Delta, Colo.

No. MC–112822 (Sub-No. E10), filed April 21, 1974. Applicant: BRAY LINES, INC., P.O. Box 1191, Cushing, Okla. 74023. Applicant's representative: Robert A. Stone (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Dairy products*, from points in Oregon, to points in Arkansas, Louisiana, Mississippi, Missouri, and Tennessee. The purpose of this filing is to eliminate the gateways of points in Minnesota (except Minneapolis-St. Paul and points in the Minneapolis-St. Paul, Minn., commercial zone as defined by the Commission).

No. MC–117119 (Sub-No. E2), filed April 22, 1974. APPLICANT: Willis Shaw Frozen Express, Inc., P.O. Box 188, Elm Springs, Ark. 72728. Applicant's representative: L. M. McLean (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (a) *Frozen foods*, from Seabrook, N.J., to points in Arizona, California, Montana, Nevada, Nebraska, New Mexico, North Dakota, Oregon, South Dakota, and Washington. The purpose of this filing is to eliminate the gateway of Elwood, Kans. (a point in the St. Joseph, Mo., commercial zone as defined by the Commission). (b) *Frozen foods*, from Salt Lake City, Ogden, and Provo, Utah, to points in Delaware and the District of Columbia. The purpose of this filing is to eliminate the gateway of Fayetteville, Ark. (c) *Frozen foods*, from points in California to points in Alabama, Georgia, Florida, North Carolina, South Carolina, and Tennessee (except Memphis). The purpose of this filing is to eliminate the gateway of Tyler, Texas. (d) *Canned goods* in mixed loads with frozen foods or agricultural commodities as defined in Section 203(b)(6) of the Interstate Commerce Act, as amended, from points in California to points in North Carolina, South Carolina, Maryland, Delaware, and the District of Columbia.

The purpose of this filing is to eliminate the gateway of Fort Worth, Texas. (e) *Frozen foods*, from points in Nebraska (except West Point, Millard, and points in the Omaha, Nebr., commercial zone as defined by the Commission) to points in Florida. The purpose of this filing is to eliminate the gateway of Little Rock, Ark. (f) *Frozen foods* (except frozen meats), from points in Nebraska (except West Point, Millard, and points in the Omaha, Nebr., commercial zone as defined by the Commission) to points in Georgia, North Carolina, South Carolina, Virginia, and West Virginia. The purpose of this filing is to eliminate the gateway of Kansas City, Mo. (g) *Frozen foods*, from Omaha, Nebr., to Springdale and Fayetteville, Ark. The purpose of this filing is to eliminate the gateways of St. Joseph, Mo., and a point in Nebraska 8 miles south of Rulo, Nebr., on Nebraska Highway 7. (h) *Frozen foods*, in packages, from Omaha, Nebr., to points in Alabama, Florida, Georgia, Kentucky, North Carolina, Tennessee, and Virginia. The purpose of this filing is to eliminate the gateway of St. Joseph, Mo. (i) *Frozen foods*, from Omaha, Nebr., to points in Arizona, California, Idaho, Nevada, New Mexico, Oregon, and Washington. The purpose of this filing is to eliminate the gateway of St. Joseph, Mo.

(j) *Frozen foods*, from Omaha, Nebr., to points in Texas. The purpose of this filing is to eliminate the gateway of St. Joseph, Mo. (k) *Frozen fruits, frozen berries, and frozen vegetables*, from points in Texas to points in Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont. The purpose of this filing is to eliminate the gateway of Hoxie, Ark. (l) *Foodstuffs*, in truckloads of 20,000 pounds or more, from points in that part of Maryland east of the Chesapeake and Delaware Canal, to Blytheville, Camden, Conway, El Dorado, Fort Smith, Hope, Hot Springs, Jonesboro, Little Rock, Paragould, Pine Bluff, Russellville, Texarkana, and Wynne, Ark. Restriction: The authority above is restricted to the transportation of the quantities indicated, when transported from one consignor to one or more consignees. The purpose of this filing is to eliminate the gateway of Cincinnati, Ohio. (m) *Foodstuffs*, in truckloads of 20,000 pounds or more, from points in that part of Maryland east of the Chesapeake Bay and South of the Chesapeake and Delaware Canal to Arkadelphia, Atkius, Batesville, Beebe, Benton, Berryville, Brinkley, Clarksville, Dermott, DeWitt, Eudora, Fayetteville, Fordyce, Forrest City, Harrison, Heber Springs, Hope, Magnolia, Malvern, McGehee, Monticello, Morrilton, Nashville, Newport, Prescott, Searcy, Stuttgart, Walnut Ridge, and Warren, Ark. The purpose of this filing is to eliminate the gateway of Cleveland, Ohio. (n) *Frozen foods*, from points in that part of California in and north of the southern boundaries of Santa Cruz, Santa Clara, Merced, Fresno, and Mono Counties, Calif., to Omaha, Nebraska. The purpose of this filing is to eliminate the gateways of Preston, Idaho, and St. Joseph, Mo.

No. MC–127505 (Sub-No. E1), filed April 26, 1974. APPLICANT: Ralph H. Boelk, dba, R. H. Boelk Truck Lines, Rt. 2, Mendta, Ill. 61342. Applicant's representative: Walter Kobos, 1016 Kehoe Drive, St. Charles, Ill. 60174. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Paper bags*, from New Hope, Pa., to points in Iowa, Minnesota, and Wisconsin (except Kenosha, Milwaukee, Ozaukee, Racine, Sheboygan, and Waukesha Counties, Wis.). Restriction: Restricted to the transportation of traffic originating at the plant site of Union Camp Corp. at New Hope, Pa. The purpose of this filing is to eliminate the gateway of Bloomington, Ill.

No. MC–128383 (Sub-No. E1), filed April 26, 1974. APPLICANT: Pinto Trucking Service, Inc., 1414 Calcon Hook Road, Sharon Hill, Pa. 19079. Applicant's representative: Gerald K. Gimmel, 303 N. Frederick Ave., Gaithersburg, Md. 20760. Authority sought to operate as

a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except commodities in bulk and automobiles), between Albany County Airport, Albany County, N.Y., and Friendship International Airport, Anne Arundel County, Md., restricted to the transportation of traffic having a prior or movement by air. The purpose of this filing is to eliminate the gateway of Schenectady County Airport, Schenectady County, N.Y.

No. MC–128383 (Sub-No. E2), filed April 26, 1974. APPLICANT: Pinto Trucking Service, Inc., 1414 Calcon Hook Road, Sharon Hill, Pa. 19079. Applicant's representative: Gerald K. Gimmel, 303 N. Frederick Ave., Gaithersburg, Md. 20760. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except commodities in bulk and automobiles), between Albany County Airport, Albany County, N.Y., and La Guardia Airport, New York, N.Y., restricted to the transportation of traffic having a prior or subsequent movement by air. The purpose of this filing is to eliminate the gateway of Schenectady County Airport, Schenectady County, N.Y.

No. MC–128383 (Sub-No. E3), filed April 26, 1974. APPLICANT: Pinto Trucking Service, Inc., 1414 Calcon Hook Road, Sharon Hill, Pa. 19079. Applicant's representative: Gerald K. Gimmel, 303 N. Frederick Ave., Gaithersburg, Md. 20760. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except commodities in bulk and automobiles), between Albany County Airport, Albany County, N.Y., and Newark Airport, Newark, N.J., restricted to the transportation of traffic having a prior or subsequent movement by air. The purpose of this filing is to eliminate the gateway of Schenectady County Airport, Schenectady County, N.Y.

No. MC–128383 (Sub-No. E4), filed April 26, 1974. APPLICANT: Pinto Trucking Service, Inc., 1414 Calcon Hook Road, Sharon Hill, Pa. 19079. Applicant's representative: Gerald K. Gimmel, 303 N. Frederick Ave., Gaithersburg, Md. 20760. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General* commodities (except commodities in bulk and automobiles), between Rochester-Monroe County Airport, Monroe County, N.Y., and John F. Kennedy International Airport, New York, N.Y., restricted to the transportation of traffic having a prior subsequent movement by air. The purpose of this filing is to eliminate the gateway of Chemung County Airport, Chemung County, N.Y.

No. MC–128383 (Sub-No. E6), filed April 26, 1974. APPLICANT: Pinto Trucking Service, Inc., 1414 Calcon Hook Road, Sharon Hill, Pa. 19079. Applicant's representative: Gerald K. Gimmel, 303 No. Frederick Ave., Gaithersburg, Md. 20760. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except commodities in bulk and automobiles), between Washington National Airport, Gravelly Point, Va., and Albany County Airport, Albany County, N.Y., restricted to the transportation of traffic having a prior or subsequent movement by air. The purpose of this filing is to eliminate the gateway of Schenectady County Airport, Schenectady County, N.Y.

No. MC–128383 (Sub-No. E7), filed April 26, 1974. APPLICANT: Pinto Trucking Service Inc., 1414 Calcon Hook Road, Sharon Hill, Pa. 19079. Applicant's representative: Gerald K. Gimmel, 303 N. Frederick Ave., Gaithersburg, Md. 20760. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except commoditites in bulk and automobiles), between Logan International Airport, Boston, Mass., and Dulles International Airport, Fairfax and Loudoun Counties, Va., restricted to the transportation of traffic having a prior or subsequent movement by air. The purpose of this filing is to eliminate the gateway of Tweed-New Haven Airport, New Haven County, Conn.

No. MC–128383 (Sub-No. E8), filed April 26, 1974. APPLICANT: Pinto Trucking Service, Inc., 1414 Calcon Hook Road, Sharon Hill, Pa. 19079. Applicant's representative: Gerald K. Gimmel, 303 N. Frederick Ave., Gaithersburg, Md. 20760. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except commodities in bulk and automobiles), between Albany County Airport, Albany County, N.Y., and Dulles International Airport, Fairfax and Loudoun Counties, Va., restricted to the transportation of traffic having a prior or subsequent movement by air. The purpose of this filing is to eliminate the gateway of Schenectady County Airport, Schenectady County, N.Y.

No. MC–128383 (Sub-No. E9), filed April 26, 1974. APPLICANT: Pinto Trucking Service, Inc., 1414 Calcon Hook Road, Sharon Hill, Pa. 19079. Applicant's representative: Gerald K. Gimmel, 303 N. Frederick Ave., Gaithersburg, Md. 20760. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except commodities in bulk and automobiles), between Albany County Airport, Albany County, N.Y., and Philadelphia International Airport, Philadelphia, Pa., restricted to the transportation of traffic having a prior or subsequent movement by air. The purpose of this filing is to eliminate the gateway of Schenectady County Airport, Schenectady County, N.Y.

No. MC–128383 (Sub-No. E10), filed April 26, 1974. APPLICANT: Pinto Trucking Service, Inc., 1414 Calcon Hook Road, Sharon Hill, Pa. 19079. Applicant's representative: Gerald K. Gimmel, 303 N. Frederick Ave., Gaithersburg, Md. 20760. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except commodities in bulk and automobiles) between Logan International Airport, Boston, Mass., and Washington National Airport, Gravelly Point, Va., restricted to the transportation of traffic having a prior or subsequent movement by air. The purpose of this filing is to eliminate the gateway of Tweed-New Haven Airport, New Haven County, Conn.

No. MC–128383 (Sub-No. E11), filed April 26, 1974. APPLICANT: Pinto Trucking Service, Inc., 1414 Calcon Hook Road, Sharon Hill, Pa. 19079. Applicant's representative: Gerald K. Gimmel, 303 N. Frederick Ave., Gaithersburg, Md. 20760. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except commodities in bulk and automobile), between La Guardia Airport, New York, N.Y., and Logan International Airport, Boston, Mass., restricted to the transportation of traffic having a prior or subsequent movement by air. The purpose of this filing is to eliminate the gateway of Tweed-New Haven Airport, New Haven County, Conn.

No. MC–128383 (Sub-No. E14), filed April 26, 1974. APPLICANT: Pinto Trucking Service, Inc., 1414 Calcon Hook Road, Sharon Hill, Pa. 19079. Applicant's representative: Gerald K. Gimmel, 303 N. Frederick Ave., Gaithersburg, Md. 20760. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except commodities in bulk and automobiles), between John F. Kennedy International Airport, New York, N.Y., and Clarence E. Hancock Airport, Onondaga County, N.Y., restricted to the transportation of traffic having a prior or subsequent movement by air. The purpose of this filing is to eliminate the gateway of Schenectady County Airport, Schenectady County, N.Y.

No. MC–128383 (Sub-No. E15), filed April 26, 1974. APPLICANT: Pinto Trucking Service, Inc., 1414 Calcon Hook Road, Sharon Hill, Pa. 19079. Applicant's representative: Gerald K. Gimmel, 303 N. Frederick Ave., Gaithersburg, Pa. 20760. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except commodities in bulk and automobiles), between Albany County Airport, Albany County, N.Y., and John F. Kennedy International Airport, New York, N.Y., restricted to the transportation of traffic having a prior or subsequent movement by air. The purpose of this filing is to eliminate the gateway of Schenectady County Airport, Schenectady County, N.Y.

No. MC–128383 (Sub-No. E16), filed April 26, 1974. APPLICANT: Pinto Trucking Service, Inc., 1414 Calcon Hook Road, Sharon Hill, Pa. 19079. Applicant's representative: Gerald K. Gimmel, 303 N. Frederick Ave., Gaithersburg, Md. 20760. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodi-*

ties (except commodities in bulk and automobiles), between Clarence E. Hancock Airport, Onondaga County, N.Y., and La Guardia Airport, New York, N.Y., restricted to the transportation of traffic having a prior or subsequent movement by air. The purpose of this filing is to eliminate the gateway of Schenectady Airport, Schenectady County, N.Y.

No. MC–128383 (Sub-No. E17), filed April 26, 1974. APPLICANT: Pinto Trucking Service, Inc., 1414 Calcon Hook Road, Sharon Hill, Pa. 19079. Applicant's representative: Gerald K. Gimmel, 303 N. Frederick Ave., Gaithersburg, Md. 20760. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except commodities in bulk and automobiles), between Rochester-Monroe County Airport, Monroe County, N.Y., and Philadelphia International Airport, Philadelphia, Pa., restricted to the transportation of traffic having a prior or subsequent movement by air. The purpose of this filing is to eliminate the gateway of Chemung County Airport, Chemung County, N.Y.

By the Commission.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.74–10561 Filed 5–7–74;8:45 am]

[Notice No. 16]

MOTOR CARRIER ALTERNATE ROUTE DEVIATION NOTICES

MAY 3, 1974.

The following letter-notices of proposals (except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application), to operate over deviation routes for operating convenience only have been filed with the Interstate Commerce Commission under the Commission's Revised Deviation Rules-Motor Carriers of Property, 1969 (49 CFR 1042.4(c)(11)) and notice thereof to all interested persons is hereby given as provided in such rules (49 CFR 1042.4(c)(11)).

Protests against the use of any proposed deviation route herein described may be filed with the Interstate Commerce Commission in the manner and form provided in such rules (49 CFR 1042.4(c)(12) at any time, but will not operate to stay commencement of the proposed operations unless filed on or before June 7, 1974.

Successively filed letter-notices of the same carrier under the Commission's Revised Deviation Rules-Motor Carriers of Property, 1969, will be numbered consecutively for convenience in identification and protests, if any, should refer to such letter-notices by number.

MOTOR CARRIERS OF PROPERTY

No. MC–29910 (Deviation No. 29), ARKANSAS-BEST FREIGHT SYSTEM, INC., 301 S. 11th Street, Fort Smith, Arkansas, 72901, filed April 19, 1974. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: From Little Rock over U.S. Highway 167 to junction Louisiana Highway 9 at or near Junction City, Ark., thence over Louisiana Highway 9 to junction U.S. Highway 79 at or near Homer, La., thence over U.S. Highway 79 to junction Interstate Highway 20 at or near Doyline, La., thence over Interstate Highway 20 to Shreveport, La., and return over the same route, for operating convenience only. The notice indicated that the carrier is presently authorized to transport the same commodities over pertinent service routes as follow: (1) From Little Rock, Ark., over Interstate 30 to junction U.S. Highway 67, thence over U.S. Highway 67 to Hope, Ark., and (2) From Hope, Ark., over Arkansas Highway 29 to the Arkansas-Louisiana State line, thence over Highway 3 to junction U.S. Highway 80, thence over U.S. Highway 80 to Shreveport, and return over the same routes.

No. MC–42487 (Deviation No. 105), CONSOLIDATED FREIGHTWAYS CORPORATION OF DELAWARE, 7101 South Cicero Avenue, Chicago, Illinois 60629, filed April 26, 1974. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: From Sherman, Tex., over unnumbered highway (formerly portion U.S. Highway 75) to junction U.S. Highway 75, thence over U.S. Highway 75 to Atoka, Oklahoma, thence over U.S. Highway 69 to junction Interstate Highway 44, thence over Interstate Highway 44 to Springfield, Mo., thence over Missouri Highway 13 to junction Missouri Highway 7 near Clinton, Mo., thence over Missouri Highway 7 to junction U.S. Highway 71 near Harrisonville, Mo., thence over U.S. Highway 71 to Kansas City Mo., and return over the same route, for operating convenience only. The notice indicates that the carrier is presently authorized to transport the some commodities over pertinent service routes as follows: From Sherman, Tex., over unnumbered highway (formerly portion of U.S. Highway 75) to junction U.S. Highway 75, thence over U.S. Highway 75 to junction unnumbered highway (formerly portion U.S. Highway 75), near Preston, Oklahoma, thence over unnumbered highway via Sapulpa, Oklahoma, to Tulsa, Oklahoma, thence over U.S. Highway 75 via Bartlesville, Oklahoma to Independence, Kansas, thence over U.S. Highway 160 to Cherryvale, Kans., thence over U.S. Highway 169 to junction U.S. Highway 59, thence over U.S. Highway 59 to junction U.S. Highway 50, thence over U.S. Highway 50 to junction U.S. Highway 169, thence over U.S. Highway 169 to junction Kansas Highway 7, thence over Kansas Highway 7 to Olathe, Kansas, thence over Kansas Highway 150 to junction U.S. Highway 169, thence over U.S. Highway 169 to Kansas City, Mo., and return over the same route.

No. MC–59680 (Deviation No. 89), STRICKLAND TRANSPORTATION CO., INC., P.O. Box 5689, Dallas, Texas 75222, filed March 27, 1974. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: From Cleveland, Ohio, over U.S. Highway 21 to junction Interstate Highway 77, thence over Interstate Highway 77 to junction Interstate Highway 80, thence over Interstate Highway 80 to junction Interstate Highway 95, thence over Interstate Highway 95 to Newark, N.J., and return over the same route, for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities over a pertinent service route as follows: From Cleveland, Ohio, over U.S. Highway 21 to the Ohio Turnpike, thence over the Ohio Turnpike to the Pennsylvania Turnpike, thence over the Pennsylvania Turnpike to Newark, N.J., and return over the same route.

No. MC–59680 (Deviation No. 90), STRICKLAND TRANSPORTATION CO., INC., P.O. Box 5689, Dallas, Texas 75222, filed March 27, 1974. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: From Cleveland, Ohio, over U.S. Highway 21 to junction Interstate Highway 77, thence over Interstate Highway 77 to junction Interstate Highway 80, thence over Interstate Highway 80 to junction Interstate Highway 280, thence over Interstate Highway 280 to Newark, N.J., and return over the same route, for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities over a pertinent service route as follows: From Cleveland, Ohio, over U.S. Highway 21 to junction the Ohio Turnpike, thence over the Ohio Turnpike to junction the Pennsylvania Turnpike, thence over the Pennsylvania Turnpike to junction the New Jersey Turnpike, thence over the New Jersey Turnpike to Newark, N.J., and return over the same route.

No. MC–75320 (Deviation No. 52), CAMPBELL "66" EXPRESS, INC., P.O. Box 807, Springfield, Missouri 65801, filed April 22, 1974. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: From Afton, Okla., over U.S. Highway 66 to junction U.S. Highway 59, thence over U.S. Highway 59 to junction of Oklahoma Highway 33, thence over Oklahoma Highway 33 to junction U.S. Highway 69, thence over U.S. Highway 69 to junction U.S. Highway 64, thence over U.S. Highway 64 to junction U.S. Highway 266, thence over U.S. Highway 266 to junction U.S. Highway 69, thence over U.S. Highway 69 to junction U.S. Highway 75, thence over U.S. Highway 75 to junction Texas Highway 121, thence over Texas Highway 121 to Fort Worth, Tex., and return over the same route, for operating conveni-

ence only. The notice indicates that the carrier is presently authorized to transport the same commodities over a pertinent service route as follows: From Afton, Okla., over U.S. Highway 66 to Tulsa, Okla., thence over Interstate Highway 44 (Turner Turnpike) to junction Oklahoma Highway 18, then over Oklahoma Highway 18 to junction U.S. Highway 177, thence over U.S. Highway 177 to junction U.S. Highway 70, thence over U.S. Highway 70 to junction Oklahoma Highway 79, thence over Oklahoma Highway 79 to the Oklahoma-Texas State line, thence over Texas Highway 79 to Wichita Falls, Texas, thence over U.S. Highway 281 to junction of U.S. Highway 180 at or near Mineral Wells, Texas., thence over U.S. Highway 180 to Fort Worth, Texas, and return over the same route.

By the Commission.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.74-10622 Filed 5-7-74;8:45 am]

[Notice No. 37]

MOTOR CARRIER APPLICATIONS AND CERTAIN OTHER PROCEEDINGS

MAY 3, 1974.

The following publications (except as otherwise specifically noted, each applicant (on applications filed after March 27, 1972) states that there will be no significant effect on the quality of the human environment resulting from approval of its application), are governed by the new Special Rule 1100.247 of the Commission's Rules of Practice, published in the FEDERAL REGISTER, issue of December 3, 1963, which became effective January 1, 1964.

The publications hereinafter set forth reflect the scope of the applications as filed by applicant, and may include descriptions, restrictions, or limitations which are not in a form acceptable to the Commission. Authority which ultimately may be granted as a result of the applications here noticed will not necessarily reflect the phraseology set forth in the application as filed, but also will eliminate any restrictions which are not acceptable by the Commission.

MOTOR CARRIERS OF PROPERTY

No. MC 98869 (Sub-No. 5) (Republication), filed September 6, 1973, and published in the FEDERAL REGISTER issue of November 15, 1973, and republished this issue. Applicant: KOSCHKEE TRANSFER, INC., Rural Route 1, Fennimore, Wis. 53809. Applicant's representative: Michael J. Wyngaard, 329 West Wilson Street, Madison, Wis. 53703. An Order of the Commission, Operating Rights Board, dated March 29, 1974, and served April 25, 1974, finds that the present and future public convenience and necessity require operation by applicant, in interstate or foreign commerce, as a *common carrier* by motor vehicle, over regular routes, of *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk and those requiring special equipment) (1) between the junction of U.S. Highway 18 and Wisconsin Highway 80 and the junction of U.S. Highway 18 and Wisconsin Highway 133, from the junction of U.S. Highway 18 and Wisconsin Highway 80 at or near Cobb, Wis., thence north over Wisconsin Highway 80 to junction Wisconsin Highway 133, thence west over Wisconsin Highway 133 to junction U.S. Highway 18 at or near Mt. Hope, Wis., and return over the same route, serving all intermediate points, and the off-route point of Avoca, Wis.; (2) between the junction of U.S. Highway 18 and Wisconsin Highway 39, and the junction of Wisconsin Highway 39 and Wisconsin Highway 78, over Wisconsin Highway 39, serving all intermediate points; (3) between Boscobel, Wis., and Bridgeport, Wis., from Boscobel over U.S. Highway 61 to junction Wisconsin Highway 60, thence over Wisconsin Highway 60 to Bridgeport, and return over the same route, serving all intermediate points, and (4) between Montfort, Wis., and Highland, Wis., over Iowa County Highway "I", serving all intermediate points; that applicant is fit, willing, and able properly to perform such service to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations thereunder. Because it is possible that other parties who have relied upon the notice of the application as published, may have an interest in and would be prejudiced by the lack of proper notice of the authority described above, issuance of a certificate in this proceeding will be withheld for a period of 30 days from the date of this publication of the authority actually granted, during which period any proper party in interest may file an appropriate petition for intervention or other relief in this proceeding setting forth in detail the precise manner in which it has been so prejudiced.

No. MC 115481 (Sub-No. 5) (REPUBLICATION), filed September 14, 1973, and published in the FR issue of November 15, 1973, and republished this issue. Applicant: GILCHRIST BROS., INC., Coastwide and Tyler Streets, Port Newark, N.J. 07114. Applicant's representative: Morton E. Kiel, Suite 6193, 5 World Trade Center, New York, N.Y. 10048. An Order of the Commission, Operating Rights Board, dated March 29, 1974, and served April 25, 1974, finds that the present and future public convenience and necessity require operation by applicant, in interstate or foreign commerce, as a *common carrier* by motor vehicle, over irregular routes, of *lumber* from Elizabeth, N.J., to New York, N.Y., and points in Dutchess, Orange, Nassau, Putnam, Rockland, Suffolk, Sullivan, Ulster, and Westchester Counties, N.Y., and Passaic, Bergen, Essex, Hudson, Union, Somerset, Mercer, Middlesex, Monmouth, and Ocean Counties, N.J., that applicant is fit, willing, and able to properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations thereunder. The purpose of this republication is to include Mercer County, N.J. as a destination point. Because it is possible that other parties who have relied upon the notice of the application as published, may have an interest in and would be prejudiced by the lack of proper notice of the authority described above, issuance of a certificate in this proceeding will be withheld for a period of 30 days from the date of publication of the authority actually granted, during which period any proper party in interest may file an appropriate petition for intervention or other relief in this proceeding setting forth in detail the precise manner in which it has been so prejudiced.

No. MC 128339 (Sub-No. 3) (REPUBLICATION), filed June 27, 1973, and published in the FR issue of September 7, 1973, and republished this issue. Applicant: REGISTER VAN & STORAGE COMPANY, INC., 1371 Jacqueline Drive, Columbus, Ga. 31906. Applicant's representative: C. E. Walker, Suite 307, First National Bank Building, P.O. Box 1085, Columbus, Ga. 31906. An Order of the Commission, Operating Rights Board, dated March 20, 1974, and served April 12, 1974, finds that the present and future public convenience and necessity require operation by applicant, in interstate or foreign commerce, as a *common carrier* by motor vehicle, of (1) *general commodities* (except commodities in bulk, motor vehicles, and Classes A and B explosives), in shipper or railroad owned trailers, (2) *shipper-and railroad-owned trailers,* between Columbus, Ga., on the one hand, and, on the other, points in Harris, Meriwether, Talbot, Taylor, Marion, Webster, Quitman, Chattachoochee, Stewart, and Schley Counties, Ga., restricted to the transportation of traffic having a prior or subsequent movement in rail trailer or flatcar service; that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations thereunder. Because it is possible that other parties who have relied upon the notice of the application as published, may have an interest in and would be prejudiced by the lack of proper notice of the authority described above, issuance of a certificate in this proceeding will be withheld for a period of 30 days from the date of this publication of the authority actually granted, during which period any proper party in interest may file an appropriate petition for intervention or other relief in this proceeding setting forth in detail the precise manner in which it has been so prejudiced.

No. MC 128685 (Sub-No. 17) (REPUBLICATION), filed October 23, 1973, and published in the FR issue of December 13, 1973, and republished this issue. Applicant: DIXON BROS., INC., P.O. Box 636, New Castle, Wyo. 82701. Applicant's representative: Robert S. Stauffer, 3539 Boston Road, Cheyenne, Wyo. 82001.

An Order of the Commission, Operating Rights Board, dated April 10, 1974, and served April 29, 1974, finds that the present and future public convenience and necessity require operation by applicant, in interstate or foreign commerce, as a *common carrier* by motor vehicle, over irregular routes, of *building materials, supplies* used in the construction of buildings, and *cabinets, floor coverings, furnaces, plumbing fixtures, kitchen appliances* and other such *items* used in the completion of new residential buildings from the plant site and warehouse facilities of Nordaas American Homes, at or near Minnesota Lake, Minn., to points in Colorado, Montana, Nebraska, North Dakota, South Dakota, and Wyoming; that applicant is fit, willing, and able properly to perform such service and Interstate Commerce Act and the Commission's rules and regulations thereto conform to the requirements of the under. The purpose of this republication is to accurately describe the commodities for which the supporting shipper has requested transportation service. Because it is possible that other parties who have relied upon in the notice of the application as published, may have an interest in and would be prejudiced by the lack of proper notice of the authority described above, issuance of a Certificate in this proceeding will be withheld for a period of 30 days from the date of this publication of the authority actually granted, during which period any proper party in interest may file an appropriate petition for intervention or other relief in this proceeding setting forth in detail the precise manner in which it has been so prejudiced.

No. MC 136069 (Sub-No. 1) (REPUBLICATION), filed October 15, 1971, and published in the FR issue of December 16, 1971, and republished this issue. Applicant: COIN DEVICES CORP., 64 Broad Street, Elizabeth, N.J. 07201. Applicant's representative: Robert B. Pepper, 174 Brower Avenue, Edison, N.J. 08817. A Decision and Order of the Commission, Division 1, dated April 18, 1974, and served April 26, 1974, finds that the present and future public convenience and necessity require operation by applicant in interstate or foreign commerce, as a *contract carrier*, by motor vehicle, over irregular routes, of (1) *coins, currency, and checks* (a) between Elizabeth, N.J., on the one hand, and, on the other, Paramus, N.J., and Nanuet, N.Y., under a continuing contract or contracts with Bamberger's, of Newark, N.J., and of (2) *coins, currency, and checks* between Elizabeth, N.J., and New York, N.Y., under a continuing contract or contracts with The National State Bank of Elizabeth, N.J., that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations thereunder. The purpose of this republication is to show that authority has been granted for operations between Elizabeth and Paramus, N.J. Because it is possible that other parties who have relied upon the notice of the application as published, may have an interest in and would be prejudiced by the lack of proper notice of the authority described above, issuance of a permit in this proceeding will be withheld for a period of 30 days from the date of this publication of the authority actually granted, during which period any proper party in interest may file an appropriate petition for intervention or other relief in this proceeding setting forth in detail the precise manner in which it has been so prejudiced.

No. MC 30226 (Sub-No. 5) (Notice of filing of petition to modify permit), filed April 15, 1974. Petitioner: HOWELL TRUCKING COMPANY, INC., One Frozen Food Plaza, Secucus, N.J. 07094. Petitioner's representative: Martin Werner, 2 West 45th Street, New York, N.Y. 10036. Petitioner holds a motor *contract carrier*, permit in No. MC 30226 (Sub-No. 5) issued September 22, 1972, authorizing transportation, over irregular routes of, (1) *frozen foods and foods, other than frozen*, in vehicles equipped with mechanical refrigeration, from New York, N.Y., and Jersey City, N.J., to points in New Jersey, Fairfield County, Conn., and Dutchess, Nassau, Orange, Putnam, Rockland, Suffolk, Ulster, and Westchester Counties, N.Y.; and (2) *returned shipments of foods*, in vehicles equipped with mechanical refrigeration (except commodities in tank and hopper-type vehicles), from points in New Jersey, Fairfield County, Conn., and Dutchess, Nassau, Orange, Putnam, Rockland, Suffolk, Ulster, and Westchester Counties, N.Y., to New York, N.Y., and Jersey City, N.J., under a continuing contract with The Great Atlantic and Pacific Tea Company, Inc., of New York, N.Y., Gristede Bros., Inc., of New York, N.Y., and Anderson, Clayton & Co., of Dallas, Tex. By the instant petition, petitioner seeks to delete Gristede Bros., Inc., as a contracting shipper and substitute in lieu thereof The Merchants Refrigerating Company as an additional contracting shipper. Any interested person or persons desiring to participate may file an original and six copies of his written representations, views, or arguments in support of or against the petition within 30 days from the date of publication in the FEDERAL REGISTER.

No. MC 45877 (Notice of filing of petition to modify a commodity description), filed April 17, 1974. Petitioner: FINKLE'S EXPRESS, INC., P.O. Box 682, Allwood Station, Clifton, N.J. 07012. Petitioner's representative: George A. Olsen, 69 Tonnele Avenue, Jersey City, N.J. 07306. Petitioner holds a motor *contract carrier* permit in No. MC 45877, issued March 14, 1942, authorizing transportation, over irregular routes, of *crude rubber, rubber products, and materials and supplies* used or useful in the manufacture and processing of rubber and rubber products, (1) between points in Bergen, Passaic, Hudson, Essex, Morris, Union, Somerset, and Middlesex Counties, N.J. on the one hand, and, on the other, New York, N.Y., and points in Westchester and Nassau Counties, N.Y.; and (2) between Butler, Clifton, Newark, and Passaic, N.J., on the one hand, and, on the other, points in Hudson, Essex, Passaic, and Morris Counties, N.J. By the instant petition, petitioner seeks to modify its commodity description to read: *"Crude synthetics, synthetic products,* and materials and supplies used or useful in the manufacture and processing of synthetics and synthetic products." Any interested person or persons desiring to participate may file an original and six copies of his written representations, views, or arguments in support of or against the petition within 30 days from the date of publication in the FEDERAL REGISTER.

No. MC 78332 (Notice of filing of petition for modification clarification and amendment of certificate), filed April 22, 1974. Petitioner: NYLANTIC FREIGHT LINES, INC., 1415 Boston Post Road, Larchmont, N.Y. 10538. Petitioner's representative: George A. Olsen, 69 Tonnele Avenue, Jersey City, N.J. 07306. By Order of the Commission in No MC–FC–74980, served March 1, 1974, and consummated March 26, 1974, petitioner holds motor *common carrier* authority in No. MC 78332, to transport, *household goods* as defined by the Commission, and *loft and factory equipment and stock*, between New York, N.Y., on the one hand, and, on the other, points in Connecticut and New Jersey. By the instant petition, petitioner seeks (1) that the Commission issue an appropriate order that the petitioner be empowered and permitted to designate as its terminal area, all points within which local operations may be conducted in the New York, N.Y., Commercial Zone as established by the Commission, or in the alternative, amend its territorial description to read: "between the New York, N.Y., Commercial Zone, as defined in *Commercial Zones and Terminal Areas*, 53 M.C.C. 451, within which local operations may be conducted pursuant to the partial exemption of section 203(b)(8) of the Interstate Commerce Act, (the 'exempt zone') and those points in New Jersey within 5 miles of New York, N.Y., and all of any municipality in New Jersey any part of which is within 5 miles of New York, N.Y." Any interested person or persons desiring to participate may file an original and six copies of his written representations, views, or arguments in support of or against the petition within 30 days from the date of publication in the FEDERAL REGISTER.

No. MC 89523 (Sub-Nos. 11, 18, and 20) (Notice of filing of petition to extend commodity descriptions), filed April 17, 1974. Petitioner: MID-STATES TRUCKING CO., a Corporation, 514 East Hackberry, P.O. Box 3186, Enid, Okla. 7370. Petitioner's representative: Billy R. Reid, 6108 Sharon Road, Fort Worth, Tex. 76116. Petitioner holds motor *contract carrier* permits in No. MC 89523 (Sub-Nos. 11, 18, and 20) issue June 5, 1967, August 26, 1970, and April 27, 1972, respectively, authorizing transportation, over irregular routes, of in Sub-No. 11, *sodium hypochlorite solution*, in containers, from Houston, Tex., to points

in that part of Oklahoma on and south of U.S. Highway 64, in Sub-No. 18, *sodium hydroxide solutions and dry laundry bleach*, in containers, from Houston, Tex., to points in Oklahoma; and in Sub-No. 20, *household, laundry, and cleaning compounds and supplies, and animal litter*, from Houston, Tex., to points in Oklahoma; in Sub-Nos. 11, 18, and 20, under a continuing contract or contracts with the Clorox Company. By the instant petition, petitioner seeks to extend the commodity description stated in each of the subs above, by adding the following: "cooking oil packaged in aerosol cans that is sprayed into cooking utensils to allow nonstick, burn-free frying and cooking." Any interested person or persons desiring to participate may file an original and six copies of his written representations, views, or arguments in support of or against the petition within 30 days from the date of publication in the FEDERAL REGISTER.

No. MC 94901 (Sub-No. 1) (Notice of filing of petition to modify a commodity description), filed April 11, 1974. Petitioner: EDDY MOVING AND STORAGE CO., INC., 31 Merritt St., Port Chester, N.Y. 10573. Petitioner's representative: William P. Jackson and Terry P. Wilson, 919 18th Street NW., Washington, D.C. 20006. Petitioner holds a motor *common carrier* certificate in No. MC 94901 (Sub-No. 1) issued January 17, 1969, authorizing transportation, over irregular routes, of *computer tapes, cards, documents and records*, between points in Bergen County, N.J., on the one hand, and, on the other, points in Westchester, Dutchess and Ulster Counties, N.Y., restricted to the transportation of packages of not more than 50 pounds each. By the instant petition, petitioner seeks to modify its commodity description to read: "computer tapes, cards, documents, records, printed matter, and machine parts, and equipment, materials and supplies used in the manufacture, sale or service of business machine." Any interested person or persons desiring to participate may file an original and six copies of his written representations, views or arguments in support of or against the petition within 30 days from the date of publication in the Federal Register.

No. MC 105350 (Sub-Nos. 10 and 13) (Notice of filing of petition to renew explosives authority), filed April 15, 1974. Petitioner: NORTH PARK TRANSPORTATION COMPANY, 5150 Columbine St., Denver, Colo. 80216. Petitioner's representative: Leslie R. Kehl, Suite 1600 Lincoln Center, 1660 Lincoln St., Denver, Colo. 80203. Petitioner holds motor *common carrier* certificates in No. MC 105350 (Sub-Nos. 10 and 13) issued July 2, 1956 and August 14, 1968, authorizing transportation, over regular routes, of in Sub-No. 10, *general commodities* (except those of unusual value, household goods as defined by the Commission, commodities in bulk and those requiring special equipment), (1) Between Denver, Colo., and Kremmling, Colo., serving the intermediate points of Empire, Colo., and all intermediate points between Kremmling and Empire: From Denver over U.S. Highway 6 to Idaho Springs, Colo. (also from Denver over U.S. Highway 40 to Idaho Springs), thence over U.S. Highway 40 to Kremmling, and return over the same route; and (2) Between junction U.S. Highways 40 and 34, near Granby, Colo., and Grand Lake, Colo., serving all intermediate points: From junction U.S. Highways 40 and 34 near Granby over U.S. Highway 34 to Grand Lake, and return over the same route; and in Sub-No. 13, *general commodities* (except petroleum and petroleum products, in bulk, in tank vehicles, commodities of unusual value, household goods as defined by the Commission, commodities in bulk, and those commodities requiring the use of special equipment) Between Parshall, Colo., and the terminus of Williams Fork Road in Colorado, Serving all intermediate points and all off-route points in Grand County, Colo., South of U.S. Highway 40: From Parshall over unnumbered highway (Williams Fork Road) to its terminus, and return over the same route. By the instant petition, petitioner seeks to renew its explosives authority contained in the sub-nos. specified above. Any interested person or persons desiring to participate may file an original and six copies of his written representations, views or arguments in support of or against the petition within 30 days from the date of publication in the Federal Register.

No. MC 123005 (Sub-No. 2) (Notice of filing of petition to eliminate a service restriction), filed April 22, 1974. Petitioner: THE LUPER TRANSPORTATION COMPANY, a Corporation, 350 East 21st, Wichita, Kans. 67214. Petitioner's representative: Noal Albert (same address as petitioner). Petitioner holds a motor *common carrier* certificate in No. MC 123004 (Sub-No. 2) issued August 3, 1973, authorizing transportation, over irregular routes, of (1) *meats, meat products and meat by-products, dairy products, and articles distributed by meat packinghouses*, as described in Sections A, B, and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except commodities in bulk, and hides and skins), (a) between Wichita, Kans., on the one hand, and, on the other, Memphis, Tenn., points in that part of Missouri on and south of a line beginning at the Mississippi River on the east and extending westerly along U.S. Highway 60 to junction Missouri Highway 5 near Mansfield, Mo., thence northerly along Missouri Highway 5 to junction U.S. Highway 54 near Camdenton, Mo., thence westerly along U.S. Highway 54 to the Kansas-Missouri State Boundary line, points in that part of New Mexico on and east of a line beginning at the New Mexico-Oklahoma State Boundary line, and extending westerly along U.S. Highway 64 to Clayton, N. Mex., thence southerly along New Mexico Highway 18 to junction U.S. Highway 54 near Tucumcari, N. Mex., thence southerly along U.S. Highway 54 to Alamogordo, N. Mex., thence southwesterly along U.S. Highway 70 to Las Cruces, N. Mex., thence southerly along U.S. Highway 80 to the Texas-New Mexico State Boundary line, and points in Arkansas, Louisiana, Oklahoma, and Texas; and (b) between Arkansas City, Kans., on the one hand, and, on the other, Memphis, Tenn., and points in Arizona, Arkansas, New Mexico, Oklahoma, and Texas; and (2) *such commodities* as are used by meat packers in the conduct of their business when destined to and for use by meat packers, as described in Section D of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except commodities in bulk, in tank vehicles) and *butter, cheese and oleomargarine*, from Memphis, Tenn., points in that part of Missouri on and south of a line beginning at the Missouri-Kansas State Boundary line and extending easterly along U.S. Highway 54 to Camdenton, Mo., thence southerly along Missouri Highway 5 to Mansfield, Mo., and thence easterly along U.S. Highway 60 to the Mississippi River, and points in Arkansas, Louisiana, Oklahoma and Texas, to Wichita, Kans., restricted in (1) and (2) above to traffic originating at the named points of origin, and destined to the named points of destination.

By the instant petition, petitioner seeks to eliminate the service restriction so as to allow interline and interchange service.

NOTE.—No reference is made to petitioner's request that the authority be restricted against tacking pursuant to the Commission's order in Gateway Elimination, 119 MCC 530, codified at 49 CFR 1065. Any interested person or persons desiring to participate may file an original and six copies of his written representations, views or arguments in support of or against the petition within 30 days from the date of publication in the Federal Register.

No. MC 133794 (Sub-No. 1) (notice of filing of petition an origin point and a contracting shipper) filed April 18, 1974. Petitioner: CONVERTERS TRANSPORTATION, INC., Box 351, Garnerville, N.Y. 10923. Petitioner's representative: Edward L. Nehez, 10 East 40th Street, New York, N.Y. 10016. Petitioner holds a motor *contract carrier* permit in No. MC 133794 (Sub-No. 1) issued January 22, 1971, authorizing transportation, over irregular routes, of *piece goods and materials and supplies* used in the dyeing or finishing of piece goods, between the plantsite of Elk Piece Dye Works, Inc., Garnerville, N.Y., on the one hand, and, on the other, points in Bergen, Essex, Hudson, Union, and Passaic Counties, N.J., and points in that part of the New York, N.Y., Commercial Zone as defined in *Commercial Zones and Terminal Areas*, 53 M.C.C. 451, within which local operations may be conducted pursuant to the partial exemption of section 203(b)(8) of the Act (the "exempt zone") under a continuing contract with Elk Piece Dye Works, Inc. By the instant petition, petitioner seeks to add the plant site of S D Sales Corp., Garnerville, N.Y., as a point of origin and add S D. Sales Corp., as an additional contracting shipper. Any interested person

or persons desiring to participate may file an original and six copies of his written representations, views or arguments in support of or against the petition within 30 days from the date of publication in the Federal Register.

No. MC 135963 (notice of filing of petition to add a terminal point), filed April 24, 1974. Petitioner: J.T.F. SHUTTLE CO., INC., 345 Soundview Avenue, Bronx, N.Y. 10472. Petitioner's representative: George A. Olsen, 69 Tonnele Avenue, Jersey City, N.J. 07306. Petitioner holds a motor *contract carrier* permit in No. MC 135963, issued January 26, 1973, authorizing transportation, over irregular routes, of *such commodities* as are sold by retail mail order houses, between points in the New York, N.Y., Commercial Zone as described by the Commission in the report in *New York, N.Y. Commercial Zone,* I.M.C.C. 665, White Plains, N.Y., Providence, R.I., and Webster, Springfield, and Boston, Mass. By the instant petition, petitioner seeks to add Baltic, Conn., as an additional terminal point. Any interested person or persons desiring to participate may file an original and six copies of his written representations, views or arguments in support of or against the petition within 30 days from the date of publication in the FEDERAL REGISTER.

APPLICATIONS UNDER SECTIONS 5 AND 210a(b)

The following applications are governed by the Interstate Commerce Commission's Special Rules governing notice of filing of application by motor carriers of property or passengers under Sections 5(a) and 210a(b) of the Interstate Commerce Act and certain other proceedings with respect thereto. (49 CFR 1.240).

MOTOR CARRIERS OF PROPERTY

APPLICATIONS FOR CERTIFICATES OR PERMITS WHICH ARE TO BE PROCESSED CONCURRENTLY WITH APPLICATIONS UNDER SECTION 5 GOVERNED BY SPECIAL RULE 240 TO THE EXTENT APPLICABLE

No. MC 1936 (Sub-No. 40), filed March 28, 1974. Applicant: B & P MOTOR EXPRESS, INC., 720 Gross Street, Pittsburgh, Pa. 15224. Applicant's representative: Herbert Burstein, 1 World Trade Center, New York, N.Y. 10048. Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: General commodities (except articles of unusual value, dangerous explosives articles; liquid commodities in tank vehicles, heavy machinery and equipment, building materials, household goods; office and store equipment, building materials usually hauled in dump trucks; livestock, motor vehicles), between points in the industrial, commercial and terminal area of Chicago, including Chicago, Ill.

NOTE.—Common control may be involved. The purpose of this application is to convert the Certificate of Registration issue under MC-124041 and subs thereunder to a Certificate of Public Convenience and Necessity. This is a matter directly related to the Section 5 proceeding in MC-F-12181 published in the FR issue of April 10, 1974. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill.

No. MC 2202 (Sub-No. 464), filed April 16, 1974. Applicant: ROADWAY EXPRESS, INC., 1077 Gorge Boulevard, P.O. Box 471, Akron, Ohio 44309. Applicant's representative: William O. Turney, 2001 Massachusetts Avenue NW., Washington, D.C. 20036. Authority sought to operate as a *common carrier,* by motor vehicle, over regular routes, transporting: *General commodities,* (1) Between Texarkana and Corning, Ark. serving all intermediate points: From Texarkana over U.S. Highway 67 to Corning, and return over the same route; (2) Between Texarkana and El Dorado, Ark., serving all intermediate points: From Texarkana over U.S. Highway 82 to El Dorado, and return over the same route; (3) Between El Dorado and Little Rock, Ark., serving all intermediate points: From El Dorado over U.S. Highway 167 to Little Rock, and return over the same route; (4) Between El Dorado and Camden, Ark., serving all intermediate points between El Dorado and Smackover: From El Dorado over Arkansas Highway 7 to Camden, and return over the same route; (5) Between Magnolia and Marianna, Ark., serving all intermediate points: From Magnolia over U.S. Highway 79 to Marianna, and return over the same route; (6) Between Conway and Eudora, Ark., serving all intermediate points: From Conway over U.S. Highway 65 to Eudora, and return over the same route; (7) Between Wilmot and the junction of U.S. Highways 165 and 65, serving all intermediate points: From Wilmot over U.S. Highway 165 to junction U.S. Highway 65, and return over the same route; (8) Between Crossett and Hamburg, Ark., serving all intermediate points: From Crosset over U.S. termediate points: From Hamburg over Highway 82 to Hamburg, and return over the same route; (9) Between Hamburg, and the junction of Arkansas Highway 81 and U.S. Highway 65, serving all intermediate points: From Hamburg over Arkansas Highway 81 to junction U.S. Highway 65, and return over the same route;

(10) Between Warren and Pine Bluff, Ark., serving all intermediate points: From Warren over Arkansas Highway 15 to Pine Bluff, and return over the same route; (11) Between DeWitt and the junction of Arkansas Highway 11 and U.S. Highway 70, serving all intermediate points: From DeWitt over Arkansas Highway 152 to junction Arkansas Highway 11, thence over Arkansas Highway 11 to U.S. Highway 70, and return over the same route; (12) Between Helena and Wynne, Ark., serving all intermediate points: From Helena over U.S. Highway 49 to junction Arkansas Highway 1, thence over Arkansas Highway 1 to Wynne, and return over the same route; (13) Between Little Rock and W. Memphis, Ark., serving all intermediate points: From Little Rock over U.S. Highway 70 to W. Memphis, and return over the same route; (14) Between Jonesboro and W. Memphis, Ark., serving all intermediate points: From Jonesboro over U.S. Highway 63 to W. Memphis, and return over the same route; (15) Between Paragould and Jonesboro, Ark., serving all intermediate points: From Paragould over Arkansas Highway 1 to Jonesboro, and return over the same route; (16) Between Batesville and junction U.S. Highways 167 and 67, serving all intermediate points: From Batesville over U.S. Highway 167 to junction U.S. Highway 67, and return over the same route; (17) Between Batesville and junction of Arkansas Highway 14 and U.S. Highway 63, serving all intermediate points: From Batesville over Arkansas Highway 14 to junction U.S. Highway 63, and return over the same route; (18) Between Fort Smith and Conway, Ark., serving all intermediate points: From Fort Smith over U.S. Highway 64 to Conway, and return over the same route; (19) Between Malvern and Hot Springs, Ark., serving all intermediate points: From Malvern over U.S. Highway 270 to Hot Springs, and return over the same route; (20) Between Hot Springs and Nashville, Ark., serving all intermediate points: From Hot Springs over U.S. Highway 70 to Kirby, thence over Arkansas Highway 27 to Nashville, and return over the same route;

(21) Between Alma and Bentonville, Ark., serving all intermediate points: From Alma over U.S. Highway 71 to Bentonville, and return over the same route; (22) Between Fort Smith and Morrilton, Ark., serving all intermediate points: From Fort Smith over U.S. Highway 71 to Greenwood, thence over Arkansas Highway 10 to Perryville, thence over Arkansas Highway 9 to Morrilton, and return over the same route; (23) Between Perryville and Little Rock, Ark., serving all intermediate points: From Perryville over Arkansas Highway 10 to Little Rock, and return over the same route; (24) Between Arkansas River and Plainview, Ark., serving all intermediate points: From the Arkansas River over Arkansas Highway 60 to Plainview, and return over the same route; (25) Between the junction of Arkansas Highways 60 and 113, and the junction of Arkansas Highways 113 and 10, serving all intermediate points and the off-route point of Fourche: From junction of Arkansas Highways 60 and 113 over Arkansas Highway 113 to junction of Arkansas Highway 10, and return over the same route; (26) Between Ola, Ark., and the junction of Arkansas Highways 7 and 60, serving all intermediate points: From Ola over Arkansas Highway 7 to junction of Arkansas Highway 60, and return over the same route; (27) Between Ola and Rover, Ark., serving all intermediate points and the off-route point of Kingston: From Ola over Arkansas Highway 28 to Rover, and return over the same route; (28) Between Rover and Danville, Ark., serving all intermediate points: From Rover over Arkansas Highway 27 to Danville, and return over the same route; (29) Between Booneville and State Sanatorium, Ark., serving all intermediate points: From Booneville over Arkansas Highway 116 to junction of Arkansas Highway 23, thence over Arkansas High-

way 23 to State Sanatorium, and return over the same route;

(30) Between El Dorado, Ark., and the plantsite of Michigan Chemical Corporation south of El Dorado, Ark., serving no intermediate points: From El Dorado over U.S. Highway 167 to junction unnumbered highway, thence west over unnumbered highway to the plantsite of Michigan Chemical Corporation, and return over the same route; and (31) Between El Dorado, Ark., and Fordyce, Ark., over U.S. Highway 167, serving all intermediate points.

NOTE.—Common control may be involved. The purpose of this application is to convert the Certificate of Registration issued to Atlas Transit, Inc., in MC-99695 to a Certificate of Public Convenience and Necessity. This is a matter directly related to the Section 5 proceedng in MC-F-12175 published in the FR issue of April 3, 1974. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C., or Little Rock, Ark.

No. MC 124744 (Sub-No. 89), filed April 17, 1974. Applicant: MIDWEST REFRIGERATED EXPRESS, INC., 4440 Buckingham Avenue, P.O. Box 7344, Omaha, Nebr. 68101. Applicant's representative: Thomas D. Sutherland, P.O. Box 32028, 605 South 14th Street, Lincoln, Nebr. 68501. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Edible bakery supplies*, from the plantsite of Globe Products Company, Inc., in Clifton, N.J., to points in Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Nebraska, Wisconsin, Ohio, Kentucky, and West Virginia.

NOTE.—Common control may be involved. Applicant seeks to acquire the contract carrier authority under MC-133002 and Sub 1 which is the authority this application seeks to convert to common carrier authority. This is a matter directly related to the Section 5 proceeding in MC-F-12157 published in the FEDERAL REGISTER issue of March 13, 1974. If a hearing is deemed necessary, applicant requests it be held at Omaha, Nebr.

No. MC 139625, filed March 25, 1974. Applicant: MEMPHIS-BIRMINGHAM EXPRESS, INC., 618 Hamilton Bank Building, Nashville, Tenn. 37219. Applicant's representative: A. O. Buck (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except those of unusual value, Classes A and B explosive, household goods as defined by the Commission, commodities in bulk and those requiring special equipment), between Memphis, Tenn., and Birmingham, Ala.: From Memphis over U.S. Highway 78 to Birmingham and return over the same route, serving no intermediate points.

NOTE.—Common control may be involved. This application is a matter directly related to a Section 5 proceeding in No. MC-F12178 which has not yet been published in the Federal Register.

No. MC 87103 (Sub-No. 9), filed February 12, 1974. Applicant: MILLER TRANSFER AND RIGGING CO., P.O. Box 6077, Akron, Ohio 44312. Applicant's representative: A. David Millner, 744 Broad Street, Newark, N.J. 07102. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Heavy trees, heavy safes, heavy monuments, and heavy machinery* of such size, weight and bulk that the same cannot be transported in any of the common carrier operations serving the territory in question, all of such heavy commodities to be transported in platform equipment between Lansing and various points; (2) *Heavy trees, heavy safes, heavy monuments, and heavy machinery* of such size, weight and bulk that same cannot be transported in any of the common carrier operations serving the territory in question, all of such heavy commodities to be transported in platform equipment between Lansing, Mich. and radius of 35 miles thereof and various Michigan points; and (3) *articles of commodities* of such size, weight to bulk (excluding automobiles and automobile parts which are component part thereof) as to require the use of carry-all, winch or pole-trailer, or other special equipment, or which requires rigging by the carrier, between Lansing and a radius of 35 miles thereof on the one hand and various Michigan points.

NOTE.—Common control may be involved. Applicant seeks to acquire the Certificate of Registration issued to Commodore Cartage Company in MC-98835, and in connection with such purchase seeks to convert the Certificate of Registration to a Certificate of Public Convenience and Necessity. This is a matter directly related to the section 5 proceeding in MC-F-11511 published in the FR issue of January 19, 1974. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

No. MC-F-11967. (Correction) (CREGER FREIGHT LINES, INC.—PURCHASE—CALVALCADE TRUCKING, INC.), published in the September 6, 1973, issue of the FEDERAL REGISTER on page 24288. Prior notice should be modified to read: CREGER FREIGHT LINES, INC.—CONTROL AND PURCHASE—CALVALCADE TRUCKING, INC.

No. MC-F-12171. (Correction) (DON WARD, INC.—PURCHASE—ESTES TRUCKING CO.), published in the March 27, 1974, issue of the FEDERAL REGISTER on page 11367. Prior notice should have shown the address of Don Ward, Inc., as 241 W. 56th Ave., Denver, CO 80216, and the address of Estes Trucking Co., as 218 E. 5th Ave., Rifle, CO 81650.

No. MC-F-12205. Authority sought for continuance in control by LEASEWAY TRANSPORTATION CORP., 21111 Chagrin Blvd., Cleveland, OH 44122, of DEDICATED FREIGHT SYSTEMS, INC., also of Cleveland, OH 44122, and for acquisition by W. J. O'Neill and F. J. O'Neill, both of Cleveland, OH 44122, of control through the acquisition by LEASEWAY TRANSPORTATION CORP. Applicants' attorney: J. A. Kundtz, 1100 National City Bank Bldg., Cleveland, OH 44114. Operating rights sought are presently pending in No. MC-139583 (Sub-No. 1): Motor vehicle parts and accessories, and related publications, advertising material, and packaging, and shipping supplies, as a contract carrier over irregular routes, between the Ford Marketing Corporation Parts Distribution Center located in Cuyahoga Heights, Ohio, on the one hand, and, on the other, points in Ashland, Ashtabula, Auglaize, Carroll, Columbiana, Coshocton, Crawford, Cuyahoga, Delaware, Erie, Fairfield, Franklin, Geauga, Guernsey, Hancock, Hardin, Holmes, Huron, Knox, Lake, Licking, Logan, Lorain, Mahoning, Marion, Medina, Mercer, Morgan, Morrow, Muskingum, Noble, Ottawa, Perry, Portage, Richland, Sandusky, Seneca, Shelby, Stark, Summit, Trumbull, Tuscarawas, Union, Wayne, and Wyandot Counties, Ohio; Allegany, Cattarugus, Cayuga, Chatauga, Erie, Gennessee, Jefferson, Livingston, Monroe, Niagara, Ontario, Orleans, Oswego, Schuyler, Seneca, Steuben, Wayne, Wyoming, and Yates Counties, N.Y.; and Crawford, Erie, Mercer, Venango, and Warren Counties, Pa., Leaseway presently controls, with Commission approval, Anchor Motor Motor Freight, Inc. (Anchor), which holds contract carrier authority pursuant to permit granted in No. MC-808 and sub-numbered proceedings thereunder, Signal Delivery Service, Inc. (Signal), which holds contract carrier authority under permits granted in No. MC-108393 and sub-numbered proceedings thereunder, Sugar Transport, Inc. (Sugar), which holds contract carrier authority under permits granted in No. MC-115924 and sub-numbered proceedings thereunder, Pep Lines Trucking Co. (Pep), which holds authority as a motor contract carrier under permits granted in No. MC-135280 and sub-numbered proceedings thereunder, and as a motor common carrier under certificates granted in No. MC-120184 and sub-numbered proceedings thereunder, Mitchell Transport, Inc. (Mitchell), which holds authority as a motor common carrier under certificates granted in No. MC-124212 and sub-numbered proceedings thereunder, and Refiners Transport & Terminal Corporation (Refiners), which holds authority as a motor common carrier under certificates granted in No. MC-50069 and sub-numbered proceedings thereunder; Gypsum Haulage, Inc. (Gypsum), which holds authority as a motor contract carrier under permits granted in No. MC-112113 and sub-numbered proceedings thereunder. Application has not been filed for temporary authority under section 210a(b).

NOTE.—MC-139583 (Sub-No. 1), is a matter directly related. The purpose of this application is to seek Commission approval for Leaseway Transportation Corp. to continue in control of Dedicated Freight Systems, Inc., when and if it becomes a motor carrier.

No. MC-F-12206. Authority sought for control by NORTH & SOUTH LINES, INCORPORATED, 1610 South Main St., Harrisonburg, VA 22801, of T. M. ZIMMERMAN COMPANY, P.O. Box 380, Chambersburg, PA 17201, and for acquisition by ROBERT E. PLECKER, also of Harrison, VA 22801, of control of T. M.

ZIMMERMAN COMPANY, through the acquisition by NORTH & SOUTH LINES, INCORPORATED. Applicants' attorneys: John R. Sims, Jr., Suite 600, 1707 H St., NW., Washington, DC 20006, and John M. Musselman, P.O. Box 1146, Harrisburg, PA 17108. Operating rights sought to be controlled: *Specified commodities*, as a *common carrier*, over irregular routes, from, to, and between specified points in the States of Pennsylvania, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, West Virginia, Virginia, Ohio, Maine, New Hampshire, Vermont, North Carolina, South Carolina, Missouri, Illinois, Indiana, Michigan, and the District of Columbia, with certain restrictions, as more specifically described in Docket No. MC-112582 and sub-numbers thereunder. This notice does not purport to be a complete description of all of the operating rights of the carrier involved. The foregoing summary is believed to be sufficient for purposes of public notice regarding the nature and extent of this carrier's operating rights, without stating, in full, the entirety, thereof. NORTH & SOUTH LINES, INCORPORATED, is authorized to operate as a *common carrier* in Pennsylvania, Virginia, West Virginia, Delaware, New Jersey, Maryland, North Carolina, and the District of Columbia. Application has been filed for temporary authority under section 210a(b).

No. MC-F-12207. Authority sought for purchase by RUAN TRANSPORT CORPORATION, Keosauqua Way at Third, Des Moines, IA 50309, of the operating rights and property of HAROLD WAGGONER & COMPANY, 1300 Queeny Ave., E. St. Louis, IL 62206, and for acquisition by JOHN RUAN, also of Des Moines, IA 50309, of control of such rights and property through the purchase. Applicant's attorneys: Henry L. Fabritz, P.O. Box 855, Des Moines, IA 50304, and Roland Rice, Suite 618, Perpetual Bldg., Washington, DC 20004. Operating rights sought to be transferred: *Liquid chemicals*, in bulk, in tank vehicles (except liquid chemicals as described in Appendix XIII to the reports in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209), as a *common carrier* over irregular routes, from St. Louis, Mo., to points in Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Missouri, Mississippi, New York, Ohio, Oklahoma, Tennessee, and Texas; *acids* and *liquid chemicals*, in bulk, in tank vehicles, from St. Louis, Mo., and East St. Louis, Ill., to points in Maryland; *liquid chemicals*, in bulk, in tank vehicles, from St. Louis, Mo., and East St. Louis, Ill., to points in Alabama, Arkansas, Connecticut, Delaware, Louisiana, Massachusetts, Nebraska, New Hampshire, New Jersey, Pennsylvania, Rhode Island, Vermont, West Virginia, Wisconsin, and that part of Maine south of a line beginning at the Maine-New Hampshire State line and extending along U.S. Highway 2 to Bangor, Maine, thence along Maine Highway 9 to the United States-Canada Boundary line (restricted against the transportation of maleic anhydride from St. Louis, Mo., and East St. Louis, Ill., to points in Connecticut, Delaware, Massachusetts, New Jersey, Pennsylvania, Rhode Island, and West Virginia); *pentachlorophenol*, in bulk, in tank vehicles, from St. Louis, Mo., and East St. Louis, Ill., to points in Arkansas, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, New Jersey, New York (except points in Kings, Queens, Nassau, and Suffolk Counties), Pennsylvania, Ohio, Oklahoma, Texas, Wisconsin, and points in that part of Tennessee west of U.S. Highway 27, with restrictions. Vendee is authorized to operate as a *common carrier* in Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming. Application has been filed for temporary authority under section 210a(b).

NOTE.—MC-107496 (Sub-No. 951), is a matter directly related.

No. MC-F-12208. Authority sought for control by AMERICAN NATIONAL CORPORATION, a noncarrier, 2661 S. Broadway, Green Bay, WI 54304, of NATIONAL REFRIGERATED TRANSPORT, INC., 1925 National Plaza, Tulsa, OK 74151, and for acquisition by AL J. SCHNEIDER AND DONALD J. SCHNEIDER, also of Green Bay, WI 54304, of control of NATIONAL REFRIGERATED TRANSPORT, INC., through the acquisition by AMERICAN NATIONAL CORPORATION. Applicants' attorneys: Charles W. Singer, 2440 E. Commercial Blvd., Ft. Lauderdale, FL 33308, and Leonard A. Jaskiewicz, Suite 501, 1730 M St. NW., Washington, DC 20036. Operating rights sought to be controlled: *Specified commodities*, as a *common carrier* over irregular routes, from, to, and between all specified points in the United States (except Alaska and Hawaii), with restrictions. AMERICAN NATIONAL CORPORATION, holds no authority from this Commission. However, it is affiliated with (1) Schneider Transport & Storage, Inc., 2661 S. Broadway, Green Bay, WI 54304; (2) Schneider Tank Lines, Inc., 200 W. Cecil St., Neenah, WI 54956; and (3) Trans-National Truck, Inc., P.O. Box 4168, Amarillo, TX 79105, which are authorized to operate as *common carriers* in all of the States in the United States (except Alaska and Hawaii). Application has been filed for temporary authority under section 210a(b).

No. MC-F-12209. Authority sought for purchase by C. MALONE TRUCKING, INC., Rear 154 Newton St., Waltham, MA 02154, of the operating rights of ROGER W. BROWN, INC., 316 New Boston St., Woburn, MA 01801, and for acquisition by ADELE MALONE, 90 Ellison Park, Waltham, MA, of control of such rights through the purchase. Applicants' attorney: Frank J. Weiner, 15 Court Square, Boston, MA 02108. Operating rights sought to be transferred: *Brick* and *tile*, as a *common carrier* over irregular routes, from Gonic, Exeter, and Epping, N.H., and Cambridge, Bridgewater, and Westfield, Mass., to points in Massachusetts, Rhode Island, Connecticut, New Hampshire, and Vermont; *brick*, from Gonic, Exeter, and Epping, N.H., to points in Maine within 200 miles of Epping, from Boston, Mass., and points within 10 miles of Boston and those in Rhode Island, to certain specified points in New Hampshire and Maine, from North Haven, Conn., to points and places in Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont, from Berlin, East Windsor Hills, and Hartford, Conn., to points and places in Maine, New Hampshire, and Vermont, to points in Rhode Island except Pawtucket and those in Kent, Providence, and Washington Counties, and to points and places in Massachusetts except Hillford, New Bedford, Taunton, and those in that part of Massachusetts on and west of Massachusetts Highway 12; *clay*, from Exeter and Epping, N.H., to Lawrence, Mass.; *reinforced steel bars*, from Medford, Boston, and Cambridge, Mass., to certain specified points in New Hampshire, those in Providence County, R.I., and those in Tolland and Hartford Counties, Conn.; *steel floor arches*, between points in New Hampshire, Vermont, Massachusetts, Connecticut, and Rhode Island; terra cotta, between points in New Hampshire, between points in Massachusetts, between points in Connecticut, between points in Rhode Island, between points in Vermont; lumber and logs, between points in that part of Massachusetts on and south of a line beginning at the Vermont-New Hampshire State line near West Lebanon, N.H., and extending along U.S. Highway 4 to Potter Place, N.H., and thence along New Hampshire Highway 11 to the Maine-New Hampshire State line, on the one hand, and, on the other, points in that part of Massauchsetts on and east of Massachusetts Highway 12; *fertilizer*, in bags, from North Weymouth, Mass., to points in Cheshire and Sullivan Counties, N.H.; and return with *rejected shipments; fertilizer*, between points in Massachusetts on and east of Massachusetts Highway 12, on the one hand, and, on the other, points in Vermont, Rhode Island, New Hampshire, and Connecticut. Vendee is authorized to operate as a *common carrier* in Connecticut, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, and Vermont. Application has been filed for temporary authority under section 210a(b).

No. MC-F-12211. Authority sought for control and merger by STEVENS VAN

LINES, INC., 121 S. Niagara St., Saginaw, MI 48602, of the operating rights and property of HAMMEL MOVING & STORAGE, INC., 5415 Conner Ave., Detroit, MI 48213, and for acquisition by ARCHIBALD H. STEVENS, SR., also of Saginaw, MI 48602, of control of such rights and property through the transaction. Applicants' attorneys: Ramon S. Regan, 2255 Penobscot Bldg., Detroit, MI 48226, and Norman Hyman, 2290 First National Bldg., Detroit, MI 48226. Operating rights sought to be controlled and merged: *Household goods*, as defined by the Commission, as a *common carrier* over irregular routes, between points in Michigan, on the one hand, and, on the other, points in Alabama, Arkansas, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, Tennessee, Virginia, West Virginia, Wisconsin, and the District of Columbia, between Detroit, Mich., and points within two miles of Detroit, on the one hand, and, on the other, points in Ohio, Indiana, Illinois, Pennsylvania, and New York. STEVENS VAN LINES, INC., is authorized to operate as a *common carrier* in Colorado, Connecticut, Illinois, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Missouri, Nebraska, New Jersey, New York, North Dakota, Ohio, Pennsylvania, South Dakota, Tennessee, Virginia, Wisconsin, West Virginia, and the District of Columbia. Application has been filed for temporary authority under section 210a(b).

NOTICE

The Atchison, Topeka, and Santa Fe Railway Company whose address is 80 East Jackson Boulevard, Chicago, Ill. 60604, the Chicago, Rock Island and Pacific Railroad Company whose address is 139 West Van Buren Street, Chicago, Ill. 60605, the Fort Worth and Denver Railway Company whose address is Fort Worth Club Building, P.O. Box 943, Fort Worth, Tex. 76101, the Missouri-Kansas-Texas Railroad Company whose address is Katy Building, 701 Commerce Street, Dallas, Tex. 75202, the St. Louis-San Francisco Railway Company, whose address is 1517 West Front Street, Tyler, Tex. 75701, the Southern Pacific Transportation Company whose address is One Market Street, San Francisco, Calif. 94105 and The Texas and Pacific Railway Company, 505 North Industrial Boulevard, Dallas, Tex. 75207, all of whom are represented by J. Kyle DuVall, Esquire, Jackson, Walker, Winstead, Cantwell & Miller, 4300 First National Bank Bldg., Dallas, Tex. 75202 and Robert G. Seaks, Esquire, 704 Southern Building, 15th and H Streets NW., Washington, D.C. 20005, hereby gives notice that they filed on March 8, 1974, an application, assigned F.D. 27595 under Section 5 of the Interstate Commerce Act for authority to each to acquire an undivided 1/8th interest in 2.09 miles of railroad in and adjacent to The Union Terminal in the city of Dallas, county of Dallas, Dallas, Tex., and for approval of their operating such line of railroad, together with other adjacent segments of railroad over which the Union Terminal Company had operating rights, in accordance with an Operating Agreement among them dated February 19, 1974. In the opinion of the Applicants, this application, if approved by order of the Commission will not result in an effect on quality of the human environment. In accordance with the Commission's regulations (49 CFR 1100.250) in Ex Parte No. 55 (Sub-No. 4), *Implementation-Nat'l* Environmental Policy Act, 1969, 340 I.C.C. 431 (1972), any protests may include a statement indicating the presence or absence of any effect of the requested Commission action on the quality of human environment. Any such effect is alleged to be present, the statement shall include information relating to the relevant factors set forth in Ex Parte No. 55 (Sub-No. 4), supra Part (b)(1)–(5), 340 I.C.C. 431, 461. The proceeding will be handled without public hearings unless protests are received which contain information indicating a need for such hearings. Any protests submitted shall be filed with the Commission no later than 30 days from the date of first publication in the FEDERAL REGISTER.

NOTICE

Application of Amoskeag Company, a Delaware Corporation, and Dumaines, a Voluntary Association, under Section 5(2) of the Interstate Commerce Act for authority to acquire control of Maine Central Railroad Company through voting of Trusteed Stock was filed on April 23, 1974. The proposed transaction, assigned Finance Docket No. 27621, is that Applicant Amoskeag Company, Suite 4500 Prudential Tower, Boston, Massachusetts 02199 shall be permitted to vote 48,299 shares of Maine Central stock now owned by it and held in trust by the Mercantile Trust Company, National Association, as independent voting trustee and to be free to extend its control by solicitation of proxies, by acquisition of additional stock, or any other lawful means. The address of Applicant Dumaines is Suite 4500 Prudential Tower, Boston, Massachusetts 02199. The Applicants' attorneys are Alan L. Lefkowitz, Gaston Snow & Ely Bartlett, Room 1200, 225 Franklin Street, Boston, Massachusetts 02110 and John L. Davidson, Jr., Greenfield, Davidson & Mandelstamm, Suite 1516 Chemical Building, 721 Olive Street, St. Louis, Missouri 63101. The Maine Central Railroad Company, the carrier involved, operates 885.23 miles of track. The Maine Central Railroad Company operates northward and northeasterly and westward from Portland, Maine. Its western terminiare at St. Johnsbury, Vermont, and North Stratford, Vermont. Its northern terminus is Vanceboro, Maine; its eastern termini are Calais and Eastport, Maine.

The carrier involved, Maine Central, operates railroad property in the States of Maine, New Hampshire and Vermont and in the Province of New Brunswick, Canada. Applicant Dumaines through Applicant Amoskeag controls Bangor & Aroostock Railroad Company which is located wholly within the State of Maine and operates approximately 541 miles of track.

In the opinion of the Applicants, as to proceedings under this application, no major Federal action significantly affecting the quality of the human environment is involved within the meaning of 42 U.S.C. Sec. 4332(c)(2). In accordance with the Commission's regulations (49 CFR 1100.250) in Ex Parte No. 55 (Sub-No. 4), *Implementation-Nat'l Environmental Policy Act of 1969*, 340 I.C.C. 431 (1972), any protests may include a statement indicating the presence or absence of any effect of the requested Commission action on the quality of the human environment. If any such effect is alleged to be present, the statement shall include information relating to the relevant factors set forth in Ex Parte No. 55 (Sub-No. 4), supra, Part (b)(1)–(5), 340 I.C.C. 431, 461.

The proceeding will be handled without public hearings unless protests are received which contain information indicating a need for such hearings. Any protests submitted should be filed with the Commission no later than 30 days from the date of first publication in the FEDERAL REGISTER.

By the Commission.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.74-10623 Filed 5-7-74;8:45 am]

[Notice No. 503]

ASSIGNMENT OF HEARINGS

MAY 3, 1974.

Cases assigned for hearing, postponement, cancellation, or oral argument appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the Official Docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponements of hearings in which they are interested. No amendments will be entertained after May 8, 1974.

Ex Parte 295 Sub 1, Increased Freight Rates and Charges, 1973—Recyclable Materials, now being assigned continued hearing May 14, 1974, at the Offices of the Interstate Commerce Commission, Washington, D.C.

W-1273, Aiple Towing Co., Inc., now being assigned hearing July 8, 1974 (2 weeks), at Chicago, Ill., in a hearing room to be later designated.

MC 138548 Subs 1 and 2, Indianoaks Transportation Co., now assigned June 3, 1974, at Chicago, Ill., is cancelled and the applications are dismissed.

MC 119777 Sub-271, Ligon Specialized Hauler, Inc., now assigned June 24, 1974, at Louisville, Ky., is postponed indefinitely.

MC-C-8266, Stanley S. Barstow, dba Barstow Transportation—Investigation and Revocation of Certificates—now being assigned hearing July 10, 1974 (2 days), at Hartford, Conn., in a hearing room to be later designated.

MC 130206, William J. Chernesky, now being assigned hearing July 9, 1974 (3 days), at Boston, Mass., in a hearing room to be later designated.

MC-C-8261, Coastal Cities Coach Co.—Investigation And Revocation Of Certificates—now being assigned July 9, 1974, at Newark, N.J., in a hearing room to be later designated.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.74-10616 Filed 5-7-74;8:45 am]

[Notice 62]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

APRIL 30, 1974.

The following are notices of filing of application, except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application, for temporary authority under section 210a(a) of the Interstate Commerce Act provided for under the new rules of Ex Parte No. MC-67 (49 CFR Part 1131), published in the FEDERAL REGISTER, issue of April 27, 1965, effective July 1, 1965. These rules provide that protests to the granting of an application must be filed with the field official named in the FEDERAL REGISTER publication, within 15 calendar days after the date of notice of the filing of the application is published in the FEDERAL REGISTER. One copy of such protests must be served on the applicant, or its authorized representative, if any, and the protests must certify that such service has been made. The protests must be specific as to the service which such protestant can and will offer, and must consist of a signed original and six (6) copies.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in field office to which protests are to be transmitted.

MOTOR CARRIERS OF PROPERTY

No. MC 20992 (Sub-No. 31 TA), filed April 23, 1974. Applicant: DOTSETH TRUCK LINE, INC., Knapp, Wis. 54749. Applicant's representative: Patrick E. Quinn, 605 So. 14th Street, P.O. Box 82028, Lincoln, Nebr. 68501. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Vegetable harvesting and handling equipment*, from Clear Lake, Wis., to points in Alabama, Arizona, Arkansas, California, Colorado, Connecticut, District of Columbia, Florida, Georgia, Idaho, Iowa, Kansas, Kentucky, Louisiana, Maine Maryland, Massachusetts, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Mexico, North Carolina, North Dakota, Oklahoma, Oregon, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming, and (2) *materials, equipment, and supplies* used in the manufacturing, production, and distribution of vegetable harvesting and handling equipment, from points in the above-named destination states, to Clear Lake, Wis., for 180 days. RESTRICTION: Restricted against the transportation of commodities in bulk and those which by reason of size or weight require the use of special equipment, and further restricted to traffic originating at or destined to Clear Lake, Wis. SUPPORTING SHIPPER: Pixall Corporation, Clear Lake, Wis. 54005. SEND PROTESTS TO: Raymond T. Jones, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 448 Federal Bldg., U.S. Courthouse, 110 So. 4th Street, Minneapolis, Minn. 55401.

No. MC 27356 (Sub-No. 7 TA) (CORRECTION), filed April 10, 1974, Published in the FEDERAL REGISTER notice No. 58, dated April 23, 1974, and republished as corrected this issue. Applicant: M-F EXPRESS, INC., 610 E. Emma Avenue, Springdale, Ark. 72764. Applicant's representative: Douglas C. Wynn, P.O. Box 1295, Greenville, Miss. 38701.

NOTE.—The purpose of this republication is to show that applicant now seeks to operate over a *regular route*, rather than an irregular route. The rest of the application will remain as previous published in the FEDERAL REGISTER.

No. MC 30446 (Sub-No. 5 TA), filed April 24, 1974. Applicant: BRUCE JOHNSON TRUCKING COMPANY, INC., 125 E. Craighead Road, Charlotte, N.C., 28225. Applicant's representative: Thomas R. Travillion, P.O. Box 5647, 3408 North Graham Street, Charlotte, N.C. 28225. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Plastic materials*, in bulk, in closed vans, from Celriver, S.C., to Charleston, S.C., and to Savannah and/or Port Wentworth, Ga., for 180 days. SUPPORTING SHIPPER: Celanese Corporation, Manager-Domestic Traffic, John J. Nome, 1211 Avenue of the Americas, New York, N.Y. 10036. SEND PROTESTS TO: District Supervisor Terrell Price, Interstate Commerce Commission, Bureau of Operations, 800 Briar Creek Road, CC516, Charlotte, N.C. 28205.

No. MC 50069 (Sub-No. 488 TA), filed April 23, 1974. Applicant: REFINERS TRANSPORT & TERMINAL CORPORATION, 445 Earlwood Avenue, Oregon, Ohio 43616. Applicant's representative: Jack A. Gollan (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Sulphuric acid*, in bulk, in tank vehicles, from Oregon, Ohio, to points in Indiana (except Elkhart, Ind.) for 180 days. SUPPORTING SHIPPER: Coulton Chemical Corporation, 1400 Otter Creek Road, Oregon, Ohio 43616. SEND PROTESTS TO: Keith D. Warner, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 313 Federal Office Bldg., 234 Summit Street, Toledo, Ohio 43604.

No. MC 107460 (Sub-No. 48 TA), filed April 23, 1974. Applicant: WILLIAM Z. GETZ, INC., 3055 Yellow Goose Road, Lancaster, Pa. 17601. Applicant's representative: Donald D. Shipley (same address as above). Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Metal roofing and accessories thereof and fabricated metal products*, from the plant site of Fabral Corporation located at or near Gridley, Ill., to points in Minnesota, and (2) *materials and supplies* used in the manufacture of metal roofing, from points in Indiana, to the plant site of Fabral Corporation located at or near Gridley, Ill., for 180 days. SUPPORTING SHIPPER: Fabral Corporation, P.O. Box 310, Gridley, Ill. 61744. SEND PROTESTS TO: Robert P. Amerine, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 278 Federal Bldg., P.O. Box 869, Harrisburg, Pa.

No. MC 111170 (Sub-No. 212 TA), filed April 23, 1974. Applicant: WHEELING PIPE LINE, INC., 2811 N. West Avenue, P.O. Box 1718, El Dorado, Ark. 71730. Applicant's representative: Tom E. Moore (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Sodium hydro sulfide*, in bulk, from plantsite of Dow Chemical in Columbia County, Ark., to Demopolis, Ala., for 180 days. SUPPORTING SHIPPER: Dow Chemical U.S.A., Eastern Division, P.O. Box 6417, Cleveland, Ohio 44101. SEND PROTESTS TO: District Supervisor William H. Land, Jr., Interstate Commerce Commission, Bureau of Operations, 2519 Federal Office Building, 700 West Capitol, Little Rock, Ark. 72201.

No. MC 111729 (Sub-No. 434 TA), filed April 23, 1974. Applicant: PUROLATOR COURIER CORP., 2 Nevada Drive, Lake Success (NHP-PO), N.Y. 11040. Applicant's representative: John M. Delany (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Business papers, records, audit and accounting media, advertising* materials of all kinds, (a) between Austin, Minn., and La Crosse, Wis.; (b) between points in Wayne County, Mich., on the one hand, and, on the other, Anderson, Fort Wayne, Kokomo, and Richmond, Ind.; and Lexington, Ky.; and (c) from Cleveland, Ohio, to Beaver Falls, Pa.; and (2) *proofs, cuts, copy, layouts, printing plates, and advertising material, and business papers, records, audit and accounting media of*

all kinds, restricted to packages or articles weighing in the aggregate no more than 75 pounds, from one consignor to one consignee on any one day, (a) between Indianapolis, Ind., on the one hand, and, on the other, Grand Rapids, Mich., and Peoria, Ill., and (b) between Elkhart, Ind., on the one hand, and, on the other, Battle Creek, Berrien Springs, Grand Rapids, Muskegon, and Niles, Mich., for 180 days. SUPPORTING SHIPPERS: (1) F. W. Means & Co., 2822 University Ave., Waterloo, Iowa; (2) Montgomery Ward & Co., 835 North Crest Shopping Center, Fort Wayne, Ind.; (3) AAV Companies, 31100 Solon Road, Solon, Ohio; (4) Lithotone, Inc., 1313 W. Hivelry Avenue, Elkhart, Ind.; and (5) Alexander Typesetting, Inc., 125 N. East Street, Indianapolis, Ind. SEND PROTESTS TO: Anthony D. Giaimo, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 26 Federal Plaza, New York, N.Y. 10007.

No. MC 113908 (Sub-No. 312 TA) (CORRECTION), filed April 1, 1974, published in the FEDERAL REGISTER issue of April 16, 1974, and republished as corrected this issue. Applicant: ERICKSON TRANSPORT CORPORATION, 2105 East Dale Street, Glenstone Station, P.O. Box 3180, Springfield, Mo. 65804. Applicant's representative: B. B. Whitehead (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Vinegar, vinegar stock, and vinegar stock concentrate*, in bulk, from Nixa and Springfield, Mo., to Tacoma and Sumner, Wash., for 180 days. SUPPORTING SHIPPER: Standard Brands, Inc., Midwest Vinegar Division, 3638 North Broadway, Chicago, Ill. 60613. SEND PROTESTS TO: John V. Barry, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 600 Federal Office Building, 911 Walnut Street, Kansas City, Mo. 64106.

NOTE.—The purpose of this republication is to correct the community of vinegar concentrate to *vinegar stock concentrate*, in which stock was omitted in error.

No. MC 115691 (Sub-No. 31 TA), filed April 22, 1974. Applicant: MURPHY TRANSPORTATION, INC., 1414 Crawford Avenue, P.O. Box 1090, Anniston, Ala. 36201. Applicant's representative: John P. Carlton, 903 Frank Nelson Building, Birmingham, Ala. 35203. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Treated and untreated lumber and treated and untreated posts*, from Haleyville, Ala., to points in Wisconsin on and south of Wisconsin State Highway 29; points in Iowa on and east of U.S. Highway 69; and points in Ohio, Indiana, Illinois, Pennsylvania, New York, and the lower peninsula of Michigan, for 180 days. SUPPORTING SHIPPERS: Fullco Lumber Co., Inc., P.O. Box 617, Haleyville, Ala. 35565; Free State Lumber Company, Inc., Haleyville, Ala. 35565; Newburg Road Lumber Co., Inc., P.O. Box 548, Haleyville, Ala. 35565; and Joe A. Fuller Lumber Co., Inc., P.O. Box 190, Haleyville, Ala. 35565. SEND PROTESTS TO: Clifford W. White, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 1616, 2121 Building, Birmingham, Ala. 35203.

No. MC 116474 (Sub-No. 31 TA), filed April 22, 1974. Applicant: LEAVITTS FREIGHT SERVICE, INC., 3855 Marcola Road, Springfield, Oreg. 97477. Applicant's representative: David C. White, 2400 SW. Fourth Avenue, Portland, Oreg. 97201. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Poles and piling*, for the account of J. H. Baxter & Company, from Eugene, Oreg., to points in Marin, San Francisco, San Mateo, and Santa Clara Counties, Calif., for 180 days. SUPPORTING SHIPPER: J. H. Baxter & Company, 1618 SW. First Avenue, Portland, Oreg. 97201. SEND PROTESTS TO: District Supervisor Odoms, Bureau of Operations, Interstate Commerce Commission, 114 Pioneer Courthouse, Portland, Oreg. 97204.

No. MC 119726 (Sub-No. 37 TA), filed April 22, 1974. Applicant: N.A.B. TRUCKING CO., INC., 2502 West Howard Street, P.O. Box 21006, Indianapolis, Ind. 46221. Applicant's representative: James L. Beattey, 130 East Washington St., Suite 1000, Indianapolis, Ind. 46204. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Cardboard cartons*, knock down, from Jacksonville, Fla., to the plant site of Midland Glass Company, Inc., at Warner Robins, Ga., for 180 days. SUPPORTING SHIPPER: Midland Glass Company, Inc., P.O. Box 557, Cliffwood, N.J. 07721. SEND PROTESTS TO: James W. Habermehl, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 802 Century Bldg., 36 S. Penn. Street, Indianapolis, Ind. 46204.

No. MC 119726 (Sub-No. 38 TA), filed April 22, 1974. Applicant: N.A.B. TRUCKING CO., INC., 2502 West Howard Street, P.O. Box 21006, Indianapolis, Ind. 46211. Applicant's representative: James L. Beattey, 130 East Washington St., Suite 1000, Indianapolis, Ind. 46204. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Glass containers and closures thereof*, including *caps, covers, and tops*, from Terre Haute, Ind., to points in Illinois, Missouri, Wisconsin, Michigan, and Ohio, for 180 days. SUPPORTING SHIPPER: Midland Glass Company, Inc., P.O. Box 557, Cliffwood, N.J. 07721. SEND PROTESTS TO: District Supervisor James W. Habermehl, Interstate Commerce Commission, Bureau of Operations, 802 Century Bldg., 36 S. Penn. St., Indianapolis, Ind. 46204.

No. MC 123048 (Sub-No. 306 TA), filed April 19, 1974. Applicant: DIAMOND TRANSPORTATION SYSTEM, INC., 5021 21st Street, P.O. Box A, Racine, Wis. 53401. Applicant's representative: Carl S. Pope (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Tractors* (except truck tractors) weighing less than 12,000 pounds, from Baltimore, Md., to Columbus, Ohio, and Davenport, Iowa, for 180 days. SUPPORTING SHIPPER: Deutz Tractor Corporation, 2080 Peachtree Industrial Court, Chamblee, Ga. 30341. SEND PROTESTS TO: District Supervisor John E. Ryden, Interstate Commerce Commission, Bureau of Operations, 135 West Wells Street, Room 807, Milwaukee, Wis. 53203.

No. MC 124078 (Sub-No. 591 TA), filed April 23, 1974. Applicant: SCHWERMAN TRUCKING CO., a Corporation, 611 South 28th Street, Milwaukee, Wis. 53246. Applicant's representative: Richard H. Prevette (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) (a) *Commodities* which because of size, weight, or shape require the use of special handling, and (b) *attachments, parts, machinery, materials, and supplies* related to the commodities named in Part (1)(a) and moving in connection therewith; (2) *self-propelled articles* each weighing 15,000 pounds or more and *related machinery, tools, parts, and supplies* moving in connection therewith; and (3) *commodities* which because of size, weight, or shape, do not require the use of special equipment or special handling when transported as part of the same shipment with either (a) *commodities* which because of size, weight, or shape require the use of special equipment or special handling, or (b) *self-propelled articles* each weighing 15,000 pounds or more, from Escanaba, Mich., to points in the United States (except Alaska and Hawaii), for 180 days. SUPPORTING SHIPPER: Harnischfeger Corporation, Milwaukee, Wis. 53246 (D. G. Ploetz, General Traffic Manager). SEND PROTESTS TO: District Supervisor John E. Ryden, Bureau of Operations, Interstate Commerce Commission, 135 West Wells Street, Room 807, Milwaukee, Wis. 53203.

No. MC 133939 (Sub-No. 3 TA), filed April 24, 1974. Applicant: IMPERIAL AIR FREIGHT SERVICE, INC., 151 Oliver Street, Newark, N.J. 07105. Applicant's representative: Charles E. Creager, P.O. Box 1417, Hagerstown, Md. 21740. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except Classes A and B explosives, commodities in bulk, and commodities requiring special equipment), restricted to shipments having a prior or subsequent movement by air, between John F. Kennedy International Airport, Jamaica, N.Y., and La Guardia Airport, Flushing, N.Y., and Newark Airport, Newark, N.J., on the one hand, and, on the other, points in Ulster and Dutchess Counties, N.Y., for 180 days. SUPPORTING SHIPPERS: Dolphin Communications, Inc., 181 Church Street, Poughkeepsie, N.Y. 12601; Hercules, Incorporated, 910 Market St., Wilmington, Del. 19899; Tidal Communications Corp., 121

Washington St., Poughkeepsie, N.Y. 12602; and I. C. Danczak, Inc., 209 Broadway, Port Ewen, N.Y. 12466. SEND PROTESTS TO: District Supervisor Robert S. H. Vance, Interstate Commerce Commission, Bureau of Operations, 9 Clinton St., Newark, N.J. 07102.

No. MC 134922 (Sub-No. 76 TA), filed April 22, 1974. Applicant: B. J. McADAMS, INC., Route 6, Box 15, North Little Rock, Ark. 72118. Applicant's representative: L. C. Cypert (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Electrical appliances, equipment, and parts* as defined by the Commission in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 283, Appendix VII, restricted against the transportation of commodities in bulk and commodities which by reason of size or weight require the use of special equipment, from the plantsite and warehouse facilities of Gibson Metalux Corporation at or near Americus, Ga., to points in Arizona, California, Colorado, Idaho, New Mexico, Oregon, Utah, and Washington, for 180 days. SUPPORTING SHIPPER: Gibson Metalux Corporation, Sutterfield Road, P.O. Box 1207, Americus, Ga. 31709. SEND PROTESTS TO: District Supervisor William H. Land, Jr., Interstate Commerce Commission, Bureau of Operations, 2519 Federal Office Building, 700 West Capitol, Little Rock, Ark. 72201.

No. MC 138018 (Sub-No. 10 TA), filed April 22, 1974. Applicant: REFRIGERATED FOODS, INC., 1420 33rd Street, Denver, Colo. 80205. Applicant's representative: Arlyn L. Westergren, 7100 West Center Road, Omaha, Nebr. 68106. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meat, meat products, meat byproducts, and articles distributed by meat packinghouses* as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except hides and commodities in bulk, in tank vehicles), from the plantsite of and storage facilities utilized by American Beef Packers, Inc., at or near Cactus, Tex., (Moore County) to points in California, Colorado, Nebraska, Kansas, Iowa, Minnesota, Wisconsin, and Illinois, restricted to traffic originating at and destined to the named points, for 180 days. SUPPORTING SHIPPER: American Beef Packers, Inc., 7000 W. Center Road, Omaha, Nebr. SEND PROTESTS TO: Roger L. Buchanan, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 2022 Federal Building, Denver, Colo. 80202.

No. MC 138719 (Sub-No. 2 TA), filed April 23, 1974. Applicant: PATTERN TRUCKING COMPANY, INC., Box 297, Patten, Maine 04765. Applicant's representative: Theodore Polydoroff, 1250 Connecticut Avenue, Washington, D.C. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Lumber* from plant site and shipping facilities of Northern Mill and Lumber Co., Inc., at or near Patten, Maine, to points in Indiana and Illinois, for 180 days. SUPPORTING SHIPPER: Northern Mill and Lumber Co., Inc., Patten, Maine 04765. SEND PROTESTS TO: Donald G. Weiler, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Rm. 307, 76 Pearl St., Portland, Maine 04112.

PASSENGER APPLICATION

No. MC 107450 (Sub-No. 4 TA), filed April 12, 1974. Applicant: METROPOLITAN COACH CORPORATION, 1621 North 28th Street, Richmond, Va. 23223. Applicant's representative: Steven L. Weiman, 1730 M Street NW., Suite 501, Washington, D.C. 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Passengers and their baggage* in round trip charter operations, beginning and ending at points within 15 miles of Richmond, including Richmond, Va., and extending to Colorado, Florida, Georgia, Illinois, Louisiana, Michigan, Missouri, Ohio, South Carolina, and Tennessee, for 180 days. SUPPORTED BY: There are approximately 12 statements of support attached to the application which may be examined here at the Interstate Commerce Commission in Washington, D.C., or copies thereof which may be examined at the field office named below. SEND PROTESTS TO: District Supervisor, Interstate Commerce Commission, Bureau of Operations, 10–502 Federal Bldg., Richmond, Va. 23240.

By the Commission.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.74–10618 Filed 5–7–74;8:45 am]

NOTICE OF FILING OF MOTOR CARRIER INTRASTATE APPLICATIONS

MAY 3, 1974.

The following applications for motor common carrier authority to operate in intrastate commerce seek concurrent motor carrier authorization in interstate or foreign commerce within the limits of the intrastate authority sought, pursuant to section 206(a)(6) of the Interstate Commerce Act, as amended October 15, 1962. These applications are governed by Special Rule 1.245 of the Commission's rules of practice, published in the FEDERAL REGISTER, issue of April 11, 1963, page 3533, which provides, among other things, that protests and requests for information concerning the time and place of State Commission hearings or other proceedings, any subsequent changes therein, any other related matters shall be directed to the State Commission with which the application is filed and shall not be addressed to or filed with the Interstate Commerce Commission.

California Docket No. MC 54798, filed April 10, 1974. Applicant: HATFIELD TRUCKING SERVICE, INC., 1625 North C Street, Sacramento, Calif. 95814. Applicant's representative: Eldon M. Johnson, The Hartford Building, 650 California Street, Suite 2808, San Francisco, Calif. 94108. Certificate of public convenience and necessity sought to operate a freight service as follows: *General commodities*, between the following points, serving all intermediate points on the said routes and all off-route points within twenty (20) miles thereof: (1) Project City and Stockton on Interstate Highway 5; (2) Red Bluff and Merced on State Highway 99; (3) Williams and Nevada City on State Highway 20; (4) Grass Valley and Placerville on State Highway 49; (5) Sacramento and Placerville on U.S. Highway 50; (6) Auburn and the San Francisco Territory (as described in Note 1 hereto) on Interstate Highway 80; (7) Pinole and Stockton on State Highway 4; (8) The San Francisco Territory (as described in Note 1 hereto) and Stockton on Interstate Highway 580, Interstate Highway 205 and Interstate Highway 5; and (9) also serving all off-route points in the Counties of Amador, El Dorado, Lassen, Nevada, Placer, Plumas, and Sierra. In performing the service herein described, the routes and points listed above may be joined and combined, and use may be made of any and all streets, roads, highways, and bridges necessary or convenient for the performance of said service. Except that, pursuant to the authority herein sought, no shipments of the following shall be transported: (A) Used household goods, personal effects and office, store and institution furniture, fixtures and equipment not packed in accordance with the crated property requirements set forth in Item 5 of Minimum Rate Tariff Number 4–B; (B) automobiles, trucks, and buses, viz: New and used, finished or unfinished passenger automobiles (including jeeps), ambulances, hearses, and taxis, freight automobiles, automobile chassis, trucks, truck chassis, truck trailers, trucks and trailers combined, buses and bus chassis;

(C) Livestock, viz: Barrows, boars, bulls, butcher hogs, calves, cattle, cows, dairy cattle, ewes, feederpigs, gilts, goats, heifers, hogs, kids, lambs, oxen, pigs, rams (bucks), sheep, sheep camp outfits, sows, steers, stags, swine of wethers; (D) liquids, compressed gases, commodities in semiplastic form and commodities in suspension in liquids in bulk, in tank trucks, tank trailers, tank semitrailers or a combination of such highway vehicles; (E) commodities when transported in motor vehicles equipped for mechanical mixing in transit; (F) logs; (G) trailer coaches and campers, including integral parts and contents when the contents are within the trailer coach or camper; and (H) mining, building, paving, and construction materials in bulk, in dump trucks or in hopper-type trucks. Note 1: The San Francisco Territory: Between points in California (including the City of San Jose) within an area bounded by a line beginning at the point the San Francisco-San Mateo County Boundary line meets the Pacific Ocean; thence

easterly along said boundary line to a point 1 mile west of U.S. Highway 101; southerly along an imaginary line 1 mile west of and paralleling U.S. Highway 101 to its intersection with Southern Pacific Company right of way at Arastradero Road; southeasterly along the Southern Pacific Company right of way to Pollard Road, including industries served by the Southern Pacific Company spur line extending approximately 2 miles southwest from Simla to Permanente; easterly along Pollard Road to W. Parr Avenue; easterly along W. Parr Avenue to Capri Drive; southerly along Capri Drive to E. Parr Avenue; easterly along E. Parr Avenue to the Southern Pacific Company right of way; southerly along the Southern Pacific Company right of way to the Campbell-Los Gatos city limits; easterly along said limits and the prolongation thereof to the San Jose-Los Gatos Road; northeasterly along San Jose-Los Gatos Road to Foxworthy Avenue.

Easterly along Foxworthy Avenue to Almaden Road; southerly along Almaden Road to Hillsdale Avenue; easterly along Hillsdale Avenue to U.S. Highway 101; northwesterly along U.S. Highway 101 to Tully Road; northeasterly along Tully Road to White Road; northwesterly along White Road to McKee Road; southwesterly along McKee Road to Capitol Avenue; northwesterly along Capitol Avenue to State Highway 17 (Oakland Road); northerly along State Highway 17 to Warm Springs; northerly along the unnumbered highway via Mission San Jose and Niles to Hayward; northerly along Foothill Boulevard to Seminary Avenue; easterly along Seminary Avenue to Mountain Boulevard; northerly along Mountain Boulevard and Moraga Avenue to Estates Drive; westerly along Estate Drive, Harbord Drive, and Broadway Terrace to College Avenue; northerly along College Avenue to Dwight Way; easterly along Dwight Way to the Berkeley-Oakland Boundary Line; northerly along said boundary line to the campus boundary of the University of California; northerly and westerly along the campus boundary of the University of California to Euclid Avenue; northerly along Euclid Avenue to Marin Avenue; westerly along Marin Avenue to Arlington Avenue; northerly along Arlington Avenue to U.S. Highway 40 (San Pablo Avenue); northerly along U.S. Highway 40 to and including the City of Richmond; southwesterly along the highway extending from the City of Richmond to Point Richmond; southerly along an imaginary line from Point Richmond to the San Francisco Waterfront at the foot of Market Street; westerly along said waterfront and shore line to the Pacific Ocean; southerly along the shore line of the Pacific Ocean to point of beginning. Intrastate, interstate, and foreign commerce authority sought.

HEARING: Date, time, and place not shown. Requests for procedural information should be addressed to the California Public Utilities Commission, State Building, Civic Center, 455 Golden Gate Avenue, San Francisco, Calif. 94102, and should not be directed to the Interstate Commerce Commission.

Florida Docket No. 74260–CCT, filed April 19, 1974. Applicant: AUSTIN TUPLER TRUCKING, INC., 6570 SW. 47th Court, Ft. Lauderdale, Fla. 33314. Applicant's representative: Richard B. Austin, 5255 NW. 87th Avenue, Miami, Fla. 33166. Certificate of public convenience and necessity sought to operate a freight service as follows:

NOTE.—Applicant seeks authority to extend its Certificate No. 1024, and Certificate No. MC 134771 so as to authorize the transportation of *Scrap metal and junk* to, from, and between all points and places in the State of Florida, on irregular routes and schedules. Intrastate, interstate, and foreign commerce authority sought.

HEARING: date, time, and place not shown. Requests for procedural information should be addressed to the Florida Public Service Commission, 700 South Adams Street, Tallahassee, Fla. 32304, and should not be directed to the Interstate Commerce Commission.

Kansas Docket No. 99579 M Route No. 10127, filed April 4, 1974. Applicant: DALE A. ZOGLEMAN, doing business as, WESTERN KANSAS EXPRESS, P.O. Box 124, Wichita, Kans. 67201. Applicant's representative: Franklin D. Gaines, 116 East 5th Street, Augusta, Kans. 67010. Certificate of public convenience and necessity sought to operate a freight service as follows: Transportation of *General commodities* except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment, over regular routes: Part I: (1) To and from and between Wichita and Hesston, Kans., serving no intermediate points. To, from, and between Wichita, Kans., North over Interstate Highway 35 to Hesston, Kans., and return over the same route. Intrastate, interstate, and foreign commerce authority sought.

HEARING: June 17, 1974, for the entire week, at the Holiday Inn Midtown, Trophy Room, Wichita, Kans., at 10:00 A.M. Requests for procedural information should be addressed to the Kansas State Corporation Commission, Fourth floor, State Office Building, Topeka, Kans. 66612, and should not be directed to the Interstate Commerce Commission.

By the Commission.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.74-10620 Filed 5-7-74;8:45 am]

[Notice No. 8]

MOTOR CARRIER ALTERNATE ROUTE DEVIATION NOTICES

MAY 3, 1974.

The following letter-notices of proposals (except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application), to operate over deviation routes for operating convenience only have been filed with the Interstate Commerce Commission under the Commission's Revised Deviation Rules-Motor Carriers of Passengers, 1969 (49 CFR 1042.2(c)(9)) and notice thereof to all interested persons is hereby given as provided in such rules (49 CFR 1042.2(c)(9)).

Protests against the use of any proposed deviation route herein described may be filed with the Interstate Commerce Commission in the manner and form provided in such rules (49 CFR 1042.2(c)(9)) at any time, but will not operate to stay commencement of the proposed operations unless filed within 30 days from the date of publication.

Successively filed letter-notices of the same carrier under the Commission's Revised Deviation Rules-Motor Carriers of property, 1969, will be numbered consecutively for convenience in identification and protests, if any, should refer to such letter-notices by number.

MOTOR CARRIERS OF PASSENGERS

No. MC–61599 (Deviation No. 8), CONTINENTAL SOUTHEASTERN LINES, INC., P.O. Box 2387, Charlotte, North Carolina 28201, filed April 22, 1974. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *passengers and their baggage*, in the same vehicle with passengers, over a deviation route as follows: (1) From Florence, S.C., over Interstate Highway 20 to junction Interstate Highway 20 and U.S. Highway 401, (2) From junction Interstate Highway 20 and U.S. Highway 401, thence over Interstate Highway 20 to junction U.S. Highway 521, (3) From junction Interstate Highway 20 and U.S. Highway 521, thence over Interstate Highway 20 to junction U.S. Highway 601, and (4) From junction Interstate Highway 20 and U.S. Highway 601, thence over Interstate Highway 20 to junction U.S. Highway 1, west of Columbia, S.C., with the following access routes: (a) From junction Interstate Highway 20 and unnumbered access road near Fort Jackson, S.C., thence over unnumbered access road to Fort Jackson, S.C., (b) From Junction Interstate Highway 20 and U.S. Highway 1 west of Columbia, S.C., thence over U.S. Highway 1 to Columbia, S.C., (c) From junction Interstate Highway 20 and South Carolina Highway 555 east of Columbia, S.C., thence over South Carolina Highway 555 to Columbia, S.C., (d) From junction Interstate Highway 20 and U.S. Highway 21 north of Columbia, S.C., thence over U.S. Highway 21 to Columbia, S.C., and (e) From junction Interstate Highway 20 and U.S. Highway 321 north of Columbia, S.C., thence over U.S. Highway 321 to Columbia, S.C., and (5) From junction Interstate Highway 95 and U.S. Highway 278 near Ridgeland, S.C., thence over Interstate Highway 95 to junction Interstate Highway 16, thence over Interstate Highway 16 to Savannah, Ga., with the following access routes: (a) From junction Interstate Highway 95 and U.S. Highway 17 near Hardeeville, S.C., thence over U.S. Highway 17 to junction U.S. Highway 17 and South Carolina Highway

170, and (b) From junction Interstate Highway 95 and Georgia Highway 21 near Moneith, Ga., thence over Georgia Highway 21 to Savannah, Ga., and return over the same routes, for operating convenience only. The notice indicates that the carrier is presently authorized to transport passengers and the same property over pertinent service routes as follow:

(1) From Florence, S.C., over U.S. Highway 52 to Darlington, S.C., thence over U.S. Highway 401 to Sumter, S.C., thence over U.S. Highway 521 to Camden, S.C., thence over U.S. Highways 1 and 601 to junction U.S. Highway 601, thence over U.S. Highway 601 to junction South Carolina Highway 12, thence over South Carolina Highway 12 to Columbia, S.C., thence over U.S. Highway 1 and Interstate Highway 20 west of Columbia, S.C., and (2) From Ridgeland, S.C., over U.S. Highway 278 to junction South Carolina Highway 170, thence over South Carolina Highway 170 to junction U.S. Highway 17, thence over U.S. Highway 17 to Savannah, Ga., and return over the same routes.

By the Commission.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.74-10621 Filed 5-7-74;8:45 am]

[No. MC-F-10502, 11411, Finance Docket No. 27243, 26958]

RINGSBY TRUCK LINES, INC., ET AL.

Correction

In the matter of No. MC-F-10502, Ringsby Truck Lines, Inc.—Control—United-Buckingham Freight Lines, Inc., et al., Finance Docket No. 27243, Ringsby Truck Lines, Inc., Note and Assumption of Obligation and Liability and No. MC-F-11411, Transcon Lines—Purchase (portion)—United-Buckingham Freight Lines, Inc., and Norwalk Truck Lines, Inc. Finance Docket No. 26958, Transcon Lines, Notes.

A report and order of the Commission, Division 3, dated April 8, 1974, was served on the parties April 29, 1974; this report appears at 116 M.C.C. 588. The following corrections need to be made:

(1) Delete lines 23-28, page 624, beginning with *"provided,"* and ending with "below,".

(2) Delete last 3 lines on page 624 begining with "(a)" and ending with "counsel,".

(3) On the last line of page 624 change "(b)" to "(a)".

(4) On the second line of page 625 change "(c)" to "(b)".

Please correct your copies accordingly.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.74-10619 Filed 5-7-74;8:45 am]

[No. AB-70, AB-55 (Sub-No. 2)]

FLORIDA EAST COAST RAILROAD CO. AND SEABOARD COAST LINE RAILROAD CO.

Abandonment of Service

In the matter of Florida East Coast Railway Company abandonment between Aurantia and Benson Junction, in Brevard and Volusia Counties, Florida and Seaboard Coast Line Railroad Company abandonment between Benson Junction and Enterprise, in Volusia County, Florida.

Upon consideration of the record in the above-entitled proceedings, and of a staff-prepared environmental threshold assessment survey which is available for public inspection upon request; and

It appearing, That no environmental impact statement need be issued in these proceedings, because these proceedings do not represent a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, 42 U.S.C. 4321, et seq.; and good cause appearing therefor:

It is ordered, That applicants be, and they are hereby, directed to publish the appended notice in newspapers of general circulation in Volusia and Brevard Counties, Fla., within 15 days of the date of service of this order, and certify to the Commission that this has been accomplished.

And it is further ordered, That notice of this order shall be given to the general public by depositing a copy thereof in the Office of the Secretary of the Commission at Washington, D.C., and by forwarding a copy to the Director, Office of the Federal Register, for publication in the FEDERAL REGISTER.

Dated at Washington, D.C., this 24th day of April, 1974.

By the Commission, Commissioner Tuggle.

[SEAL] ROBERT L. OSWALD, *Secretary.*

INTERSTATE COMMERCE COMMISSION

[Notice No. AB-70]

FLORIDA EAST COAST RAILWAY COMPANY ABANDONMENT BETWEEN AURANTIA AND BENSON JUNCTION, IN BREVARD AND VOLUSIA COUNTIES, FLORIDA

[No. AB-55 (Sub-No. 2)]

SEABOARD COAST LINE RAILROAD COMPANY ABANDONMENT BETWEEN BENSON JUNCTION AND ENTERPRISE, IN VOLUSIA COUNTY, FLORIDA

The Interstate Commerce Commission hereby gives notice that by order dated April 24, 1974, it has been determined that the proposed abandonments by the Florida East Coast Railway Company and the Seaboard Coast Line Railroad Company of the line of railroad between Aurantia and Benson Junction, Brevard and Volusia Counties, Fla., a total distance of approximately 30.7 miles, if approved by the Commission, does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321, et seq., and that preparation of a detailed environmental impact statement will not be required under section 4332(2)(c) of the NEPA.

It was concluded, among other things, that the environmental effects are considered insignificant because traffic over the line has been minimal and sporadic, the adjacent area is primarily woodlands and marshes with little prospect for commercial development dependent upon continued rail service, and salvaging operations will not materially alter the local ecological systems.

This determination was based upon the staff preparation and consideration of an environmental threshold assessment survey, which is available for public inspection upon request to the Interstate Commerce Commission, Office for Proceedings, Washington, D.C., 20423; telephone: 202-343-6989.

Interested parties may comment on this matter by the submission of representatives to the Interstate Commerce Commission, Washington, D.C., 20423, on or before May 23, 1974.

[FR Doc. 74-10617 Filed 5-7-74;8:45 am]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

AREA MANAGERS, PHOENIX, ARIZONA

Redelegation of Authority

Under authority of Bureau Order 701, dated July 23, 1964, and as amended, the Area Managers administering the Phoenix Resource Area, Lower Gila Resource Area, and the Kingman Resource Area of the Phoenix District, Arizona are authorized to act on the following matters:

Within their respective areas of responsibility in accordance with existing policies and regulations of the Department, and under direct supervision of the Phoenix District Manager, they may exercise the function 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 of grazing trespass; recommend as to acceptance of settlement.

SEC. 3.7 *Range management.* The Area Manager may take all action on:

(a) Grazing District Administration

(1) Within grazing districts, the issuance of licenses to graze or trail livestock.

(2) Permits or cooperative agreements to construct and maintain range improvements and determine the value of such improvements.

(b) Outside grazing districts, the issuance of grazing leases.

(d) Soil and moisture conservation; control of halogeton glomeratus.

(e) Controlled brush burning in accordance with plans and specifications approved by the State Director.

(f) Protection of wild, free-roaming horses and burros.

SEC. 3.8 *Forest Management.* The Area Manager may take all action on:

(a) Disposition of forest products including sales of timber not exceeding $100.00 in value.

SEC. 3.9 *Land use.* The Area Manager may take all action on:

(g) Disposition of materials other than forest products, not exceeding $2,000.00 in value.

The District Manager may at any time temporarily reserve, restrict, or withhold any portion of the above delegated authority.

This order rescinds all prior redelegations.

RILEY E. FOREMAN,
District Manager.

Approved:

HAROLD H. RAMSBACHER,
Acting State Director.

[FR Doc.74-10510 Filed 5-7-74;8:45 am]

[New Mexico 21304, 21305, 21306, 21307, 21308, 21359]

TRANSWESTERN PIPELINE CO.

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), Transwestern Pipeline Company has applied for five 6-inch and one 12-inch natural gas pipeline rights-of-way across the following lands:

NEW MEXICO PRINCIPAL MERIDIAN, NEW MEXICO

T. 19 S., R. 25 E.,
Sec. 27, SW¼SE¼;
Sec. 34, N½NE¼, E½NW¼, NW¼NW¼;
Sec. 35, NW¼NW¼, S½NW¼.
T. 20 S., R. 28 E.,
Sec. 27, W½SE¼.
T. 21 S., R. 32 E.,
Sec. 10, S½NE¼, NE¼SE¼;
Sec. 11, W½SW¼, SE¼SW¼;
Sec. 14, NW¼NE¼, S½NE¼, NE¼NW¼.
T. 23 S., R. 34 E.,
Sec. 20, W½SW¼, SE¼SW¼, S½SE¼.

These pipelines will convey natural gas across 4.43 miles of national resource lands in Lea and Eddy Counties, New Mexico.

The purpose of this notice is to allow the public an opportunity to comment upon the filing of the above six 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, P.O. Box 1397, Roswell, NM 88201.

FRED E. PADILLA,
Chief, Branch of Lands and Minerals Operations.

[FR Doc.74-10524 Filed 5-7-74;8:45 am]

Office of the Secretary

JOHN V. SALO

Statement of Changes in Financial Interests

In accordance with the requirements of section 710(b)(6) of the Defense Production Act of 1950, as amended, and Executive Order 10647 of November 28, 1955, the following changes have taken place in my financial interests during the past six months:

(1) Public Service Company of New Hampshire purchase of 16 shares of common stock.
(2) None.
(3) None.
(4) None.

This statement is made as of March 31, 1974.

Dated: April 15, 1974.

JOHN V. SALO.

[FR Doc.74-10565 Filed 5-7-74;8:45 am]

DEPARTMENT OF AGRICULTURE

Forest Service

DESCHUTES NATIONAL FOREST ADVISORY COMMITTEE

Notice of Meeting

The Deschutes National Forest Advisory Committee will meet at 6:00 p.m., May 9, 1974, for dinner at Paulina Lake Lodge, approximately 37 miles southeast of Bend, Oregon. (The Lodge can be reached by travelling south of Bend on Highway 97 to the Paulina Lake junction; then continuing east for approximately 12 miles.) The program will follow at 7:00 p.m.

The subjects to be discussed at this meeting will be winter recreational use in Newberry Crater and the proposed land exchange with Sunriver Properties, Inc.

The meeting will be open to the public. Persons who wish to attend should notify the Forest Supervisor at 211 NE Revere, Bend, Oregon 97701, telephone number (503) 382-6922.

Dated: April 23, 1974.

G. ROBERT LEAVENGOOD,
Acting Forest Supervisor.

[FR Doc.74-10517 Filed 5-7-74;8:45 am]

TIMBER MANAGEMENT, STANISLAUS NATIONAL FOREST

Notice of Availability of Final Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Forest Service, Department of Agriculture, has prepared a final environmental statement for the Timber Management Plan, Stanislaus National Forest, California USDA-FS-FES (Adm)-74-50.

The environmental statement concerns a proposed timber management plan for the management of the timber resources on the forest.

This final environmental statement was transmitted to CEQ on May 1, 1974.

Copies are available for inspection during regular working hours at the following locations:

USDA, Forest Service, South Agriculture Bldg., Room 3230, 12th St. & Independence Ave., SW., Washington, D.C. 20250.

USDA, Forest Service, 630 Sansome Street, Rm. 531, San Francisco, California 94111.

Stanislaus National Forest, 175 South Fairview Lane, Sonora, California 95370.

A limited number of single copies are available upon request to Regional Forester, Douglas R. Leisz, California Region, U.S. Forest Service, 630 Sansome Street, San Francisco, California 94111.

Copies of the environmental statement have been sent to various Federal, State, and local agencies as outlined in the CEQ guidelines.

Dated: April 30, 1974.

GLENN P. HANEY,
Acting Regional Forester.

[FR Doc.74-10516 Filed 5-7-74;8:45 am]

Packers and Stockyards Administration

[P. & S. Docket No. 4931]

PEORIA UNION STOCK YARDS COMPANY, INC. AND BUSTER & CO., ET AL

Order Extending Period of Suspension of Modifications of Rates and Charges

On March 28, 1974, an order was issued instituting the following proceeding under Title III of the Packers and Stockyards Act, 1921, as amended, 42 Stat. 159, as amended (7 U.S.C. 181 et seq.):

Buster & Company;
Clifford Higgs d/b/a Higgs Cattle Company;
Illinois Livestock Marketing Company;
Fred E. Maddux d/b/a Maddux & Company;
S. Phillip Schaffner d/b/a S & S Order Buyers;
Edwin D. Coots, Ralph K. Swords, Larry Larimore, and Thomas E. McArthur d/b/a Sitton, Coots, & Swords (39 FR 12773)

Such order, among other things, suspended and deferred the operation and use by the respondent of modifications of its current schedule of rates and charges to become effective March 30, 1974, for a period of thirty days beyond the time such modifications would otherwise go into effect.

Notice is hereby given that, since the hearing in this proceeding could not be concluded within such period of suspension, an order has been issued in the above proceeding suspending and deferring the operation and use of such modifications of the current schedule of rates and charges for a further period of thirty days beyond the date when such modifications would have otherwise become effective.

Done at Washington, D.C.

MARVIN L. MCLAIN,
Administrator, Packers and Stockyards Administration.

MAY 3, 1974.

[FR Doc.74-10595 Filed 5-7-74;8:45 am]

[P. & S. Docket No. 4933]

CORONA LIVESTOCK AUCTION, INC.

Order Extending Period of Suspension of Modifications of Rates and Charges

On March 29, 1974, an order was issued instituting the following proceeding under Title III of the Packers and Stockyards Act, 1921, as amended, 42 Stat. 159, as amended, (7 U.S.C. 181 et seq.):

Corona Livestock Auction, Inc.
Corona, California, a corporation
(39 FR 13185)

Such order, among other things, suspended and deferred the operation and use by the respondent of modifications of its current schedule of rates and charges to become effective April 1, 1974, for a period of thirty days beyond the time such modifications would otherwise go into effect.

Notice is hereby given that, since the hearing in this proceeding could not be concluded within such period of suspension, an order has been issued in the above proceeding suspending and deferring the operation and use of such modifications of the current schedule of rates and charges for a further period of thirty days beyond the date when such modifications would have otherwise become effective.

Done at Washington, D.C.

MARVIN L. MCLAIN,
Administrator, Packers and Stockyards Administration.

MAY 3, 1974.

[FR Doc.74-10596 Filed 5-7-74;8:45 am]

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

NATIONAL MARINE FISHERIES SERVICE

Notice of Meeting

The National Marine Fisheries Service will conduct a 1-day meeting for the purpose of informing the public of National Marine Fisheries Service plans for improving communications with the sports and commercial fishing industries through proposed changes in the National Marketing Service Office. The meeting will be held at the Sheraton O'Hare in Chicago, Illinois, starting at 10 a.m. on Thursday, May 16. Additional information on the meeting is available from NMFS National Marketing Services Office, 100 East Ohio Street, Chicago, Illinois 60611, 312-353-5995.

JACK W. GEHRINGER,
Acting Director.

[FR Doc.74-10564 Filed 5-7-74;8:45 am]

National Technical Information Service

GOVERNMENT-OWNED INVENTIONS

Notice of Availability for Licensing

The inventions listed below are owned by the U.S. Government and are available for licensing in accordance with the licensing policy of each Agency-sponsor.

Copies of Patent applications, either paper copy (PC) or microfiche (MF), can be purchased from the National Technical Information Service (NTIS), Springfield, Virginia 22151, at the prices cited. Requests for copies of patent applications must include the PAT-APPL number and the title.

Paper copies of patents cannot be purchased from NTIS but are available from the Commissioner of Patents, Washington, D.C. 20231, at $0.50 each.

Requests for licensing information should be directed to the address cited below for each agency.

DOUGLAS J. CAMPION,
Patent Program Coordinator, National Technical Information Service.

U.S. ATOMIC ENERGY COMMISSION, Assistant General Counsel for Patents, Washington, D.C. 20545.

Patent application 276,211: Glass Polymer Composites; filed 28 July 1972, PC $4.00/MF $1.45.

DEPARTMENT OF THE AIR FORCE, AF/JACP, Washington, D.C. 20314.

Patent application 273,004: Method of Fabricating Hollow Balls for Use in Rolling Contact Bearing Applications; filed 18 July 1972; PC $4.00/MF $1.45.

Patent application 273,005: Pressure Control System for G-suit; filed 18 July 1972; PC $4.00/MF $1.45.

Patent application 276,338: Teflon-Lined Bearing Improvement; filed 31 July 1972; PC $4.00/MF $1.45.

Patent application 288,212: Vertical Rate Reference Computer for Control of a VTOL or STOL Aircraft at a Constant Flight Path Angle; filed 11 September 1972, PC $4.75/MF $1.45.

Patent application 293,692: Method for Modifying Polyhydroxy Ethers; filed 29 September 1972; PC $4.00/MF $1.45.

Patent application 295,787: Benzofuroisoquinoline Polymers and Method for Synthesizing Same; filed 6 October 1972; PC $4.00/MF $1.45.

U.S. DEPARTMENT OF AGRICULTURE, Chief, Research Agreements and Patent Mgmt. Branch, Federal Building, General Services Division, Agricultural Research Service, Hyattsville, Maryland 20782.

Patent application 272,824: Fire and Wrinkle Resistant Organic Textiles Through Treatment with a Methylol Phosphine and an Aziridinyl Phosphorus Compound; filed 18 July 1972; PC $4.00/MF $1.45.

Patent application 274,949: A Dehydration Process to Impart Wrinkle Resistance to Cellulose-Containing Fibrous Materials; filed 25 July 1972; PC $4.00/MF $1.45.

Patent application 275,012: Improved Method of Purifying Concentrated Color Extracts from Citrus Peels; filed 25 July 1972; PC $4.00/MF $1.45.

Patent application 279,919: Preparation of Crosslinked Polyethylenimine and Impregnation of Cellulosic Material with in situ Crosslink-Polymerized Ethylenimine; filed 11 August 1972; PC $4.00/MF $1.45.

Patent application 288,802: N-Ethyl-N-3-Ethoxypropyl-Oleamides; filed 13 September 1972; PC $5.00/MF $1.45.

Patent application 288,806: Method of Increasing Covering Power of Knitted Cotton Fabric; filed 13 September 1972; PC $4.00/MF $1.45.

Patent application 288,807: The Preparation of Dibasic Dimeric Resin Acids; filed 12 September 1972; PC $4.00/MF $1.45.

Patent application 288,814: N,N-Di-n-Butyl-2-(Oleoyloxy) Propionamide; filed 13 September 1972; PC $5.00/MF $1.45.

Patent application 298,167: Recurable Crosslinked Cellulose Fabrics from Methylol Reagents and Polycarboxylic Acids; filed 16 October 1972; PC $4.75/MF $1.45.

Patent application 306,774: Production of Phosphorus and Nitrogen Containing Compounds and Polymers and Flameproofing Organic Textiles; filed 15 November 1972; PC $4.00/MF $1.45.

Patent application 324,136: Flameproofing of Cotton Cellulose with Hexamethyl Phosphorous Triamide; filed March 16, 1973; PC $4.00/MF $1.45.

Patent application 335,860: Phosphonated N,D-Disubstituted Fatty Amides; filed 26 February 1973; PC $4.00/MF $1.45.

Patent application 337,792: Polymerized Rosin Product and Process for the Production of Same; filed 5 March 1973; PC $4.00/MF $1.45.

Patent application 342,133: Modification of Cotton Textiles and Cotton/Polyester Textile Blends by Photo-Initiated Polymerization of Vinylic Monomers; filed 16 March 1973; PC $4.00/MF $1.45.

Patent application 348,558: Cotton-Oxime, Cotton-Semicarbazone, and Cotton-Hydantoin-Textile Products of High Nitrogen Content; filed 6 April 1973; PC $4.00/MF $1.45.

Patent application 348,802: N-Substituted Fatty Acid Amide Lubricants; filed 6 April 1973; PC $4.25/MF $1.45.

Patent application 351,935: Introduction of a Temporary Stiffness into Knitted Cotton for Stability During Patterning; filed 17 April 1973; PC $4.00/MF $1.45.

Patent application 365,894: A Process for Dyeing Crosslinked Cellulosic Fabrics with Disperse Dyestuffs; filed 1 June 1973; PC $4.25/MF $1.45.

Patent application 365,895: Process for Producing Fire Resistant Organic Textile Materials; filed 1 June 1973; PC $4.00/MF $1.45.

Patent application 365,896: Flame Retardant Organic Fibrous Materials; filed 1 June 1973; PC $4.00/MF $1.45.

Patent application 374,584: 3,7 Dicyano-3,5,7-Triaza-1-Phosphabicyclo (3.3.1) Nonane and Derivatives; filed 28 June 1973; PC $4.00/MF $1.45.

Patent application 374,585: Processes to Make Olive Drab to Greenish-Gold Mineral Dye Shades for Cellulosics; filed 28 June 1973; PC $4.00/MF $1.45.

Patent application 386,922: Hammer Mill with Integral Subsampling Portion; filed 9 August 1973; PC $4.00/MF $1.45.

Patent application 391,188: Process for Producing Varicolored Fabrics via the Selective Dyeing of Cellulosic Fabrics with Different Dye Types; filed 24 August 1973; PC $4.00/MF $1.45.

Patent application 400,079: Epithioamides as Plasticizer-Stabilizers; filed 24 September 1973; PC $4.00/MF $1.45.

Patent 3,681,099: Glossy Finish Linseed Water Emulsion Paints and Nonagglomerated Pigment Composition for Said Paints; filed 4 August 1970, patented 1 August 1972; not available NTIS.

Patent 3,691,158: Hexachlorocyclopentadiene Adducts of Unsaturated Amides of Azabicyclononane; filed 16 December 1971, patented 12 September 1972; not available NTIS.

Patent 3,696,600: Apparatus for Producing Corn Yarn; filed 12 April 1971, patented 10 October 1972; not available NTIS.

Patent 3,702,338: Hydroxy-Methylated Derivatives of Resin Acids, their use in Elastomeric Polyurethanes; filed 12 May 1970, patented 7 November 1972; not available NTIS.

Patent 3,702,359: Certain Microbial Insecticides and Methods of Preparation Thereof; filed 30 October 1970, patented 7 November 1972; not available NTIS.

Patent 3,714,087: Powdered Resorcinol-Formaldehyde Treated Polysaccharide-Reinforced Elastomer Masterbatches, Compounds, and Resulting Vulcanized Rubbers; filed 28 February 1972, patented 30 January 1973; not available NTIS.

Patent 3,729,379: Hydroxy-Conjugated Fatty Acids; filed 31 August 1971, patented 24 April 1973; not available NTIS.

Patent 3,730,829: Starch Xanthate Derivatives used in Papermaking; filed 18 October 1971, patented 1 May 1973; not available NTIS.

Patent 3,732,073: N,N-Diethylaziridinium Chloride as a Coreactant Catalyst for Reactions of N-Methylol Reagents with Cellulose; filed 28 March 1972, patented 8 May 1973; not available NTIS.

Patent 3,733,275: N-Substituted Fatty Acid Amide Lubricants; filed 21 December 1971, patented 15 May 1973; not available NTIS.

Patent 3,737,426: Biodegradeable Surfactants from Starch-Derived Glycosides; filed 25 September 1970, patented 5 June 1973; not available NTIS.

Patent 3,763,060: Starch Xanthate-Polyamide-Polyamine Interpolymer Paper Strength Additives; filed 9 June 1972, patented 2 October 1973; not available NTIS.

U.S. DEPARTMENT OF TRANSPORTATION, Patent Counsel, 300 7th Street, SW, Washington, DC 20590.

Patent application 449,327: An Airborne Laser Remote Sensing System for the Detection and Identification of Oil Spills; filed 8 March 1974: PC $4.00/MF $1.45.

Patent application 451,448: WEDCOM; filed 15 March 1974; PC $4.00/MF $1.45.

U.S. DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE, National Institutes of Health, Chief, Patent Branch, Westwood Building, Bethesda, Maryland 20014.

Patent application 326,145: Dialyzer Cartridge; filed 23 January 1973; PC $3.00/MF $1.45.

Patent 3,728,256: Crossflow Capillary Dialyzer; filed 22 June 1971, patented 17 April 1973; not available NTIS.

U.S. DEPARTMENT OF THE INTERIOR, Branch of Patents, 18th and C Streets, NW, Washington, D.C. 20240.

Patent application 434,162: An Optical Detection System; filed 17 January 1974: PC $4.00/MF $1.45.

Patent application 435,791: Method of Preparing Bipolar Membranes and the Production of Acids and Bases Therefrom; filed 23 January 1974: PC $4.00/MF $1.45.

Patent application 438,152: Method and Apparatus for Rapid Particle Size and Mass Analysis; filed 29 January 1974: PC $4.00/MF $1.45.

Patent application 446,833: Fluidized Bed in Reverse Osmosis Processes; filed 28 February 1974: PC $4.00/MF $1.45.

Patent 2,194,054: Apparatus for Concentrating Trace Impurities in High-Purity Helium; filed 7 August 1961, patented 13 July 1965: not available NTIS.

Patent 2,804,506: Dynamagnetic Pick-Up System; filed 31 October 1951, patented 27 August 1957: not available NTIS.

Patent 2,813,823: Destructive Distillation of Hydrocarbonaceous Materials; filed 19 September 1956, patented 19 November 1957: not available NTIS.

Patent 2,825,641: Method for Melting Refractory Metals for Casting Purposes; filed 21 September 1955, patented 4 March 1958: not available NTIS.

Patent 2,860,101: Balanced Hydrogenation of Coal; filed 20 April 1953, patented 11 November 1958: not available NTIS.

Patent 2,869,419: Orthophotoscope; filed 28 August 1956, patented 20 January 1959: not available NTIS.

Patent 2,879,472: Dynamic Resistance Recorder; filed 11 October 1957, patented 24 March 1959: not available NTIS.

Patent 2,890,111: Method of Manufacturing Titanium and Titanium Alloys; filed 30 March 1956, patented 9 June 1959: not available NTIS.

Patent 2,892,924: Electrode for Melting and Arc Welding Zirconium Metal; filed 24 January 1957, patented 30 June 1959: not available NTIS.

Patent 2,901,402: Process for Destructive Distillation of Hydrocarbonaceous Materials; filed 19 July 1957, patented 25 August 1959: not available NTIS.

Patent 2,934,443: Impact Resistant Ceramic Dielectric and Method of Making Same; filed 10 October 1957, patented 26 April 1960: not available NTIS.

Patent 3,002,091: Method of Tracing the Flow of Liquids by Use of Post Radioactivation of Tracer Substances; filed 3 November 1958, patented 26 September 1961: not available NTIS.

Patent 3,012,668: Electrostatic Separator Carrier Electrode; filed 8 December 1959, patented 12 December 1961: not available NTIS.

Patent 3,223,319: Multiple Electrode Detector; filed 18 November 1964, patented 14 December 1965: not available NTIS.

Patent 3,236,682: Process for Preparation of Caustic-Resistant Containers for High-Temperature Use; filed 28 December 1962, patented 22 February 1966: not available NTIS.

Patent 3,238,098: Method of Controlling Sea Lamprey; filed 27 January 1964, patented 1 March 1966: not available NTIS.

Patent 3,244,612: Demineralization Electrodes and Fabrication Techniques Therefor; filed 29 November 1961, patented 5 April 1966; not available NTIS.

Patent 3,254,202: Automatic Swing Curve Calculator and Plotter used to Indicate Transient Stability of Power Generators; filed 2 November 1962, patented 31 May 1966: not available NTIS.

Patent 3,257,992: Coal Burning Water Tube Steam Generator Construction Embodying Integral Primary Coal Slagging Type Furnace and Secondary Furnace; filed 28 May 1964, patented 28 June 1966; not available NTIS.

Patent 3,259,762: Electrostatic Induction Power Supply; filed 16 April 1963, patented 5 July 1966; not available NTIS.

Patent 3,260,658: Process for the Recovery of Rhenium; filed 31 October 1962, patented 12 July 1966; not available NTIS.

Patent 3,264,957: Binder and Surface Coating Made from Coal and Asphalt; filed 18 January 1963, patented 9 August 1966; not available NTIS.

Patent 3,273,993: Process of Reduction Roasting of Iron Ore with Metallic Iron; filed 30 January 1964, patented 20 September 1966; not available NTIS.

Patent 3,273,995: Recovery of Zinc from Zinc Die-Cast Scrap; filed 22 May 1964, patented 20 September 1966; not available NTIS.

Patent 3,794,574: Device for Cathodically Protecting Metal Conduit System; filed 27 April 1972, patented 26 February 1974; not available NTIS.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION, Assistant General Counsel for Patent Matters, NASA—Code GP-2, Washington, DC 20546.

Patent 3,752,556: Real Time Moving Scene Holographic Camera System; patented 14 August 1973; not available NTIS.

Patent 3,784,499: Nonflammable Coating Compositions; patented 8 January 1974; not available NTIS.

[FR Doc.74-10511 Filed 5-7-74;8:45 am]

GOVERNMENT-OWNED INVENTIONS

Notice of Availability for Licensing

The inventions listed below are owned by the U.S. Government and are available for licensing in accordance with the licensing policy of each Agency-sponsor.

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Requests for licensing information should be directed to the address cited below for each agency.

DOUGLAS J. CAMPION,
Patent Program Coordinator, National Technical Information Service.

DEPARTMENT OF THE AIR FORCE, AF/JACP, Washington, D.C. 20314.

Patent application 271,335: Cover Support Assembly; filed 13 July 1972; PC $4.00/MF $1.45.

Patent application 278,853; Method of, and Apparatus for Forming Grooves and Coolant Channels in and for Rocket Engine Composite Channel-Type Coolant Wall Having a Complex Surface; filed 8 August 1972; PC $4.00/MF $1.45.

Patent application 279,416: Breathing Mask Assembly; filed 10 August 1972; PC $4.00/MF $1.45.

Patent application 284,552: Preparation of Ultrahigh Purity Anhydrous Alkali Metal Halide Powders; filed 29 August 1972; PC $4.00/MF $1.45.

Patent application 287,188: Unbonded Flexure Seal Design; filed 7 May 1972; PC $4.00/MF $1.45.

Patent application 288,818: Releasable Connector Subassembly; filed 13 September 1972; PC $4.00/MF $1.45.

Patent application 289,694: Temperature Cycling Device; filed 15 September 1972; PC $4.00/MF $1.45.

Patent application 289,695: Method of Connecting a Metal Conduit to a Plastic Conduit; filed 15 September 1972; PC $4.00/MF $1.45.

Patent application 292,368: Thermally Stable Phenylated Heterocyclic Aromatic Polymers and Method of Synthesis; filed 26 September 1972; PC $4.00/MF $1.45.

Patent application 297,123: Process for Preparing Carrot Juice; filed 12 October 1972; PC $4.00/MF $1.45.

U.S. DEPARTMENT OF AGRICULTURE, Chief, Research Agreements and Patent Mgmt. Branch, Federal Building, General Services Division, Agricultural Research Service, Hyattsville, Maryland 20782.

Patent application 348,840: Method for Improving the Shelf Life of Roasted Peanuts; filed 6 April 1973; PC $4.00/MF $1.45.

Patent application 374,731: Whey Solids as a Stabilizer for Agricultural Foams; filed 28 June 1973; PC $4.00/

Patent application 288,812: N-Cyclohexyl-N-2-Acetoxyethyl-Oleamide; filed 13 September 1972; PC $5.00/MF $1.45.

Patent application 328,199: Shrinkage-Control Treatment for Knitted Fabrics; filed 31 January 1973; PC $4.00/MF $1.45.

Patent application 337,791: Use of Epoxides in the Preparation of Higher Fatty Acid Anhydrides; filed 5 March 1973; PC $4.00/MF $1.45.

Patent application 360,281: Azeotropic Solvents for Permanent Press Treatments of Cotton and Cotton Blend Fabrics; filed 14 May 1973; PC $4.00/MF $1.45.

Patent application 365,897: Process for Preparing Frosted and Multicolored Cotton Pile Fabrics; filed 1 June 1973; PC $4.00/MF $1.45.

Patent application 391,189: A Monophosphorus Analog of Hexamethylenetetramine and Derivatives; filed 24 August 1973; PC $4.00/MF $1.45.

Patent 3,674,880: Methods for Preparing Valuable Keto and Hydroxy Cyclic Compounds; filed 3 January 1968; patented 4 July 1972; not available NTIS.

Patent 3,709,005: Vapor-Phase Reaction Apparatus for Treating Cellulosic Textile Materials and Garments; filed 26 January 1971; patented 9 January 1973; not available NTIS.

Patent 3,729,461: Synthesis of Glycosyl Glycerides; filed 23 December 1970; patented 24 April 1973; not available NTIS.

U.S. DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE, National Institutes of Health, Chief, Patent Branch, Westwood Building, Bethesda, Maryland 20014.

Patent application 381,234: Thumbtack Microelectrode and Method of Making Same; filed 20 July 1973; PC $4.00/MF $1.45.

Patent 3,746,683: Thromboresistant Articles Made from Polyurethanes Containing a Polypropylene Glycol-Ethylene Oxide Block Copolymer; filed 24 December 1970; patented 17 July 1973; not available NTIS.

Patent 3,785,832: Dental Primer Varnish; filed 13 October 1971, patented 15 January 1974; not available NTIS.

U.S. DEPARTMENT OF THE INTERIOR, Branch of Patents, 18th and C Streets NW., Washington, DC 20240.

Patent 2,789,888: Apparatus for Performing the Fischer-Tropsch Reaction; filed 3 March 1953; patented 23 April 1957; not available NTIS.

Patent 2,829,061: Machinable Ceramic Bonded Material and Method for Producing Same; filed 24 September 1952; patented 1 April 1958; not available NTIS.

Patent 2,947,688: Process and Apparatus for the Demineralization of Saline Water; filed 10 January 1957; patented 2 August 1960; not available NTIS.

Patent 2,996,439: Rotary Still; filed 16 December 1958; patented 15 August 1961; not available NTIS.

Patent 3,002,002: Reduction of the Thiophene Nucleus; filed 2 April 1957; patented 26 September 1961; not available NTIS.

Patent 3,010,208: Method for Determining the Authenticity of Ancient Artifacts made of Obsidian; filed 6 May 1960; patented 28 November 1961; not available NTIS.

Patent 3,116,450: Tracer Liquid Release Tube Having Frangible Elements at Opposite Ends of the Tube; filed 25 August 1961; patented 31 December 1963; not available NTIS.

Patent 3,117,586: Automatic Controller; filed 30 June 1961; patented 14 January 1964; not available NTIS.

Patent 3,137,648: Pretreatment of Minerals for Electrostatic Separation; filed 24 January 1962; patented 16 June 1964; not available NTIS.

Patent 3,150,923: Process for Removing Sulfur Dioxide from Gases; filed 18 January 1962; patented 29 September 1964; not available NTIS.

Patent 3,154,381: Progressive Melting and Crystallization of Synthetic Mica; filed 20 April 1959; patented 27 October 1964; not available NTIS.

Patent 3,184,302: Process, Removal of Oxygen and Aluminum from Metals Prepared by Aluminothermic and Similar Processes; filed 24 January 1963; patented 18 May 1965; not available NTIS.

Patent 3,184,789: Apparatus for Large-Scale Application of Monomolecular Layers to Water Surfaces using Melted Material; filed 7 April 1964; patented 25 May 1965; not available NTIS.

Patent 3,228,750: Process for Separating Rare-Earth Elements by Ion Exchange; filed 7 June 1962; patented 11 January 1966; not available NTIS.

Patent 3,250,701: Stabilization of Desalination Membranes; filed 15 September 1965; patented 10 May 1966; not available NTIS.

Patent 3,262,865: Chemical Treatment and Distillation of Sea Water; filed 15 July 1963; patented 26 July 1966; not available NTIS.

Patent 3,271,246: Method of Controlling Sea Lamprey; filed 6 January 1964; patented 6 September 1966; not available NTIS.

Patent 3,271,326: Flame Spraying of Catalytically Active Pulverized Metal Oxides on Supports; filed 22 July 1963; patented 6 September 1966; not available NTIS.

Patent 3,278,028: Flotation of Mica; filed 31 October 1963; patented 11 October 1966; not available NTIS.

Patent 3,282,678: Smelting Reduced Iron Ore Pellets in the Blast Furnace; filed 16 January 1964; patented 1 November 1966; not available NTIS.

Patent 3,292,780: Process for Improved Flotation Treatment of Iron Ores by Selective Flocculation; filed 4 May 1964; patented 20 December 1966; not available NTIS.

Patent 3,293,829: Top Closure for High Temperature Electrostatic Precipitator; filed 27 August 1963; patented 27 December 1966; not available NTIS.

Patent 3,341,256: Process for Conveying Mineral Solids Through Conduits; filed 24 May 1963; patented 12 September 1967; not available NTIS.

Patent 3,369,168: Frequency Conversion System Utilizing Modulation; filed 5 August 1966; patented 13 February 1968; not available NTIS.

Patent 3,465,235: Control of Rotating Exciters for Power System Damping; filed 16 October 1967; patented 2 September 1969; not available NTIS.

Patent 3,552,754: Tube Plate Seal; filed 15 September 1969; patented 5 January 1971; not available NTIS.

Patent 3,788,465: Device and Process for Magneto-Gravimetric Particle Separation Using Non-Vertical Separation Process; filed 28 April 1972; patented 29 January 1974; not available NTIS.

[FR Doc.74-10512 Filed 5-7-74;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Center for Disease Control

MEDICAL LABORATORY SERVICES ADVISORY COMMITTEE

Notice of Meeting

Pursuant to the Federal Advisory Committee Act (Public Law 92-463), the Director, Center for Disease Control, announces the meeting dates and other required information for the following National Advisory body scheduled to assembly during the month of June 1974.

Committee name	Date, time, place	Type of meeting and/or contact person
Medical Laboratory Services Advisory Committee.	June 20-21, 1974, 9 a.m., Room 207, Bldg. 1, Center for Disease Control, Atlanta, Ga. 30333.	Open—Contact Dr. Roslyn Q. Robinson, Room 108, Bldg. 1, Center for Disease Control, Atlanta, Ga. 30333. Code: 404-633-3262.

Purpose: To evaluate the approaches of the Bureau of Laboratories, CDC, and recommend revisions or additions, and advise on various laboratory matters and proposed regulations.

Agenda: Agenda items will provide for a review of the objectives of the Licensure and Proficiency Testing Program with consideration of improved procedures leading to more effective administration of the Clinical Laboratories Improvement Act of 1967.

Agenda items are subject to change as priorities dictate.

The meeting is open to the public for observation and participation. A roster of members and other relevant information regarding the meeting may be obtained from the contact person listed above.

Dated: April 29, 1974.

DAVID SENCER,
Director, Center for Disease Control.

[FR Doc.74-10566 Filed 5-7-74;8:45 am]

Food and Drug Administration

PANEL ON REVIEW OF ORTHOPAEDIC DEVICES

Notice of Renewal

Pursuant to the Federal Advisory Committee Act of October 6, 1972 (Public Law 92-463, 86 Stat. 770-776 (5 U.S.C. App.)), the Food and Drug Administration announces the renewal by the Secretary, Department of Health, Education, and Welfare, of the Panel on Review of Orthopaedic Devices for an additional period of two years beyond April 25, 1974.

Authority for this committee will expire April 25, 1976, unless the secretary formally determines that continuance is in the public interest.

Dated: May 2, 1974.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.74-10554 Filed 5-7-74;8:45 am]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. D-74-275]

ACTING DIRECTOR, PITTSBURGH AREA OFFICE

Designation

Mr. William L. Kaplan is hereby designated as Acting Area Director of the

Pittsburgh Area Office for the period April 29, 1974, through May 12, 1974, with all the powers, functions, and duties redelegated or assigned to the Area Director.

Effective date: April 29, 1974.

(Secretary's Designation and Delegation of Authority published 36 FR 3389, Feb. 23, 1971.)

THEODORE R. ROBB,
Regional Administrator,
Region III (Phila.).

[FR Doc.74-10606 Filed 5-7-74;8:45 am]

Office of the Assistant Secretary for Equal Opportunity

[Docket No. (N-74-234)]

HOUSING PROBLEMS OF SPANISH-SPEAKING AMERICANS

Cancellation of Public Meeting

Notice is hereby given of cancellation of the previously announced public fact-finding meeting to be conducted by the Assistant Secretary for Equal Opportunity on the subject of housing problems of Spanish-Speaking Americans (39 FR 12774; April 8, 1974). The meeting was scheduled to convene Thursday, May 9, 1974, at 9 a.m., in the South Dade Government Center, 10710 S.W., 211 Street, Miami, Florida. It was scheduled to reconvene Friday, May 10, 1974, at 9 a.m., in the General Services Administration Executive Conference Room, Federal Building, 51 SW., First Avenue, Miami, Florida.

GLORIA E. A. TOOTE,
Assistant Secretary
for Equal Opportunity.

[FR Doc.74-10747 Filed 5-7-74;9:09 am]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

AVIATION REVIEW CONFERENCE

The purpose of this notice is to announce the sixth annual Aviation Review Conference. Previously called the National Aviation System Planning Review Conference, the name has been changed to more properly reflect the nature of the conference. (The establishment of annual consultative planning procedures was originally documented and publicized in 33 FR 19205, dated 24 December 1968, and 35 FR 17798, dated 19 November 1970.)

The Department of Transportation announces that the sixth annual Aviation Review Conference will be held June 3–5, 1974, at the Washington Hilton Hotel, Washington, D.C. On the first day, FAA spokesmen will identify current problems and forecast future developments. The aviation industry will assess the current situation and forecast future developments and challenges facing the aviation community during the second day. The third day will focus on the discussion of major policy/planning issues facing all segments of the aviation community.

The following topics were developed in meetings with representatives of industry and user groups through the consultative planning process. The Department of Transportation encourages comments on agenda topics. These comments should be submitted to:

Associate Administrator for Plans, Attn: AAV-10, Federal Aviation Administration, 800 Independence Avenue SW., Washington, D.C. 20591.

TOPICS

(1) Air Traffic Control.
(2) FAA Plan.
(3) Air Carriers.
(4) General Aviation.
(5) Airports.
(6) Environment.

A registration fee of $15.00, payable either in advance or at the conference, is required. The fee will include a copy of "The Year Ahead—1974, National Aviation System Plan for Fiscal Year 1975." The next NAS Ten Year Plan will be issued in the fall of 1974. Participants will have an opportunity to order these documents at the meeting.

To register for the sixth annual Aviation Review Conference, please write to the following address giving: (1) name, (2) address, (3) company/association, if any, and (4) area of interest. If preregistration is desired, please enclose a check payable to:

Federal Aviation Administration, Attn: AAV-200, 800 Independence Avenue SW., Washington, D.C. 20591.

Issued in Washington, D.C., on April 17, 1974.

F. A. MEISTER,
Acting Associate Administrator
for Plans.

[FR Doc.74-10751 Filed 5-7-74;10:26 am]

ATOMIC ENERGY COMMISSION

[Docket Nos. 50-440, 50-441]

CLEVELAND ELECTRIC ILLUMINATING CO., ET AL.

Notice and Order for Prehearing Conference, and Evidentiary Hearing

In the matter of Cleveland Electric Illuminating Company, et al. (Perry Nuclear Power Plant Units 1 and 2).

Please take notice, that pursuant to the Atomic Energy Act of 1954, as amended (Act), and the Commission's "Notice of Hearing on Application For Construction Permits" dated July 5, 1973, published in the FEDERAL REGISTER (38 FR 18481), and in accordance with the said Commission's rules of practice (10 CFR Part 2), a Prehearing Conference will be held in the above-captioned proceeding on May 23, 1974 at 10 a.m. local time at the Lake County Courthouse, Courtroom No. 3, 47 Park Place, Painesville, Ohio 44077.

The cardinal objective of said Prehearing Conference will be to settle on final preparations for the Evidentiary Session to commence the following week as noted below.

To that end:

(1) The motion to realign and petition to intervene under § 2.714 filed by the Ohio Power Siting Commission (Ohio) on March 21, 1974, supplementing and in substitution of its earlier petition to participate under § 2.715(c), is granted in view of the stipulation (received on April 18, 1974) entered into among the Cleveland Electric Illuminating Company, et al. (Applicants), the AEC Regulatory Staff (Staff), and Ohio, as well as for other good cause shown.

(2) The said stipulation between Ohio, the Applicants, and the Staff has been reviewed by the Board and is hereby approved.

(3) In accordance with several telephone conference calls between the Applicants, the Coalition For Safe Electric Power (Coalition) and the Board, it is understood that the dispute on certain matters of discovery between the Applicants and the Coalition are resolved. Accordingly, the motions to compel filed by each as against the other are considered moot.

(4) The contentions of the Coalition as set forth by agreement of the parties in a letter from the AEC Staff Counsel dated March 29, 1974, to the Board have been reviewed and are approved as matters in controversy herein.

(5) The Board expects a stipulation from the parties on authenticity, admissibility, etc., of all documents intended to be entered as evidence into the record.

(6) The Board directs that the following question be addressed: "How does the Staff reconcile its decision in favor of initially proceeding with a once-through cooling system in view of its acknowledgement in the FES of the lack of pertinent data on currents, and the lack of pertinent data on the distribution and abundance of fish larvae?" See Final Environmental Statement, paragraphs 6.1.1.1; 9.2.1.3; and 11.1.3.3.

(7) On or before May 23, 1974, the parties are directed to present to the Board the names and addresses of all prospective witnesses, correlated with the specific dates on which they are expected to appear.

Further notice is hereby given that the Evidentiary Session in this proceeding will commence at 10 a.m. local time on May 29, 1974, at the Quail Hollow Inn, Barberry Room, 11080 Concord Humbden Road, Painesville, Ohio 44077. The Board will provide an opportunity during the first day of the Evidentiary Session for all limited appearance participants to express their views either through written or oral comments.

It is so ordered.

Issued in Bethesda, Maryland, this 2d day of May 1974.

ATOMIC SAFETY AND LICENSING BOARD,
FRANK F. HOOPER,
Member.
GUSTAVE A. LINEBERGER,
Member,
JOHN B. FARMAKIDES,
Chairman.

[FR Doc.74-10474 Filed 5-7-74;8:45 am]

[Docket No. 50-367]

NORTHERN INDIANA PUBLIC SERVICE CO.

Availability of Initial Decision for Bailly Generating Station, Nuclear 1 and Issuance of Construction Permit

Pursuant to the National Environmental Policy Act of 1969 and the United States Atomic Energy Commission's regulation in Appendix D, section A.9 and A.11, to 10 CFR Part 50, notice is hereby given that an Initial Decision, dated April 5, 1974, by the Atomic Safety and Licensing Board in the above captioned proceeding authorizing issuance of a construction permit to the Northern Indiana Public Service Company for construction of the Bailly Generating Station, Nuclear 1, to be located on the southern shore of Lake Michigan in Porter County, Indiana, is available for inspection by the public in the Commission's Public Document Room (PDR) at 1717 H Street NW., Washington, D.C., and in the Westchester Township Public Library, 125 South Second Street, Chesterton, Indiana 46304.

The Initial Decision is subject to review by an Atomic Safety and Licensing Appeal Board prior to its becoming final. Any decision or action taken by an Atomic Safety and Licensing Appeal Board in connection with the Initial Decision may be reviewed by the Commission.

The Initial Decision is also being made available at the Office of the Governor, 206 State House, Indianapolis, Indiana 46204 and at the Lake-Porter County Regional Transportation & Planning Commission, 9290 Taft Place, Crown Point, Indiana 46307.

Based upon the record developed in the public hearing in the above captioned matter, the Initial Decision modified in certain respects the Final Environmental Statement relating to the construction of the Bailly Generating Station, Nuclear 1, prepared by the Commission's Directorate of Licensing. Pursuant to the provisions of 10 CFR Part 50, Appendix D, section A.11, the Final Environmental Statement is deemed modified to the extent that the findings and conclusions relating to environmental matters contained in the Initial Decision are different from those contained in the Final Environmental statement, dated February 1973. As required by section A.11 of Appendix D, a copy of the Initial Decision, which modifies the Final Environmental Statement, has been transmitted to the Council on Environmental Quality and made available to the public as noted herein.

Pursuant to the above mentioned Initial Decision, the Atomic Energy Commission (the Commission) has issued Construction Permit No. CPPR-104 to the Northern Indiana Public Service Company for construction of a single unit boiling water nuclear reactor, known as the Bailly Generating Station, Nuclear 1, designed for a rated power of approximately 1931 megawatts thermal with a net electrical output of approximately 660 megawatts.

The Commission has made appropriate findings as required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the construction permit. The application for the construction permit complies with the standards and requirements of the Act and the Commission's rules and regulations.

The construction permit is effective as of the date of issuance. The earliest date for completion is March 1, 1978, and the latest date for completion is September 1, 1979. The permit will expire on the latest date for completion of the facility.

The permit is subject to a temporary restriction on site dewatering before September 1, 1974, in accordance with the Order of the Atomic Safety and Licensing Appeal Board in this proceeding dated April 30, 1974.

In addition to the Initial Decision, copies of (1) Construction Permit No. CPPR-104; (2) the report of the Advisory Committee on Reactor Safeguards, dated October 14, 1971; (3) the Directorate of Licensing's Safety Evaluation, dated February 15, 1972 and Errata thereto; (4) Supplement No. 1 to the Safety Evaluation, dated September 29, 1972; (5) Supplement No. 2 to the Safety Evaluation, dated October 31, 1973; (6) the Preliminary Safety Analysis Report and amendments thereto; (7) the applicant's Environmental Report, dated March 22, 1971, and supplements thereto; (8) the Draft Environmental Statement, dated July 14, 1972; and (9) the Final Environmental Statement, dated February 12, 1973, are also available for public inspection at the above-designated locations and in Washington, D.C. and Chesterton, Indiana. Single copies of the Initial Decision by the Atomic Safety and Licensing Board, the construction permit, the Final Environmental Statement, and the Safety Evaluation and supplements thereto may be obtained upon request addressed to the U.S. Atomic Energy Commission, Washington, D.C. 20545, Attention: Deputy Director for Reactor Projects, Directorate of Licensing, Regulation.

Dated at Bethesda, Maryland this first day of May 1974.

For the Atomic Energy Commission.

WALTER R. BUTLER,
Chief, Light Water Reactors Projects Branch 1-2, Directorate of Licensing.

[FR Doc.74-10473 Filed 5-7-74;8:45 am]

[Docket Nos. STN 50-477, 50-478]

PUBLIC SERVICE ELECTRIC AND GAS CO.

Prehearing Conference

In the matter of Public Service Electric and Gas Company (Atlantic Generating Station, Units 1 and 2).

Notice is hereby given that, pursuant to the Atomic Energy Commission's "Notice of Hearing on Application for Site Construction Permits" published in the FEDERAL REGISTER on March 20, 1974, (39 FR 10473), and in accordance with § 2.751a of said Commission's rules of practice, 10 CFR Part 2, a special prehearing conference will be held in the above captioned proceeding on June 4, 1974, at 10:00 a.m., local time, in the Commissioners Chambers, Second Floor, City Hall, 1301 Bacharach Boulevard, Atlantic City, New Jersey.

This special prehearing conference will be held before the Atomic Safety and Licensing Board (the Board) established in the aforementioned Notice of Hearing and composed of Dr. John R. Lyman, Dr. Marvin M. Mann and Daniel M. Head, Chairman.

The application which is the subject matter of this proceeding has been made by the Public Service Electric and Gas Company on behalf of itself, Atlantic City Electric Company, and Jersey Central Power and Light Company for permits to construct site related structures and to install two floating nuclear power plants, each of which incorporates a pressurized water reactor. These plants are designated as the Atlantic Generating Station, Units 1 and 2. It is proposed that the reactors will be manufactured in Jacksonville, Florida and towed to the site. Each reactor will be designed for initial operation at 3411 thermal megawatts with a net electrical output of approximately 1150 megawatts. The proposed facilities are to be mounted on a platform and moored behind a protective breakwater in the Atlantic Ocean approximately 2.8 statute miles off the southeastern coast of New Jersey.

This special prehearing conference shall deal with the following matters:

1. Identification of the key issues;
2. Any steps necessary for further identification of the issues;
3. Outstanding petitions for intervention;
4. All pending motions;
5. The need for discovery, and the time required therefor;
6. Establishment of a schedule for further action; and
7. Such other matters as may aid in the orderly disposition of the proceeding.

At the special prehearing conference, the Board will entertain oral argument on the outstanding petitions to intervene. The petitioners, as well as the parties, will be heard in this regard. The Board will expect to be advised on issues relating both to the interest and to the contentions of the various petitioners.

Members of the public are invited to attend this prehearing conference as well as the evidentiary hearing to be held at a later date to be fixed by the Board. Members of the public wishing to make limited appearances pursuant to § 2.715 (a) of the Commission's rules of practice, 10 CFR Part 2, may identify themselves at this prehearing conference but oral or written statements to be presented by limited appearances will not be received at this conference. The Board will receive such statements at the aforementioned evidentiary hearing.

The attorneys for the respective parties and any petitioners for intervention

are directed to confer in advance of this special prehearing conference, in such manner as they may deem appropriate, and report to the Board at said conference on any stipulations regarding interest and/or matters in controversy, and on any other mutually agreeable procedures to expedite this proceeding.

Dated this 1st day of May, 1974 at Bethesda, Maryland.

By Order of the Atomic Safety and Licensing Board.

DANIEL M. HEAD,
Chairman.

[FR Doc.74-10475 Filed 5-7-74;8:45 am]

REGULATORY GUIDES

Notice of Issuance and Availability

The Atomic Energy Commission has issued two guides in its Regulatory Guide series. This series has been developed to describe and make available to the public methods acceptable to the AEC Regulatory staff of implementing specific parts of the Commission's regulations and, in some cases, to delineate techniques used by the staff in evaluating specific problems or postulated accidents and to provide guidance to applicants concerning certain of the information needed by the staff in its review of applications for permits and licenses.

Revision 1 to Regulatory Guide 1.12, "Instrumentation for Earthquakes," describes seismic instrumentation that will meet the Commission's requirements for prompt determination of the seismic response of nuclear plant features important to safety to permit comparison of such response with that used as the design basis. This guide generally endorses ANSIN18.5-1974 entitled, "Earthquake Instrumentation Criteria for Nuclear Power Plants." Regulatory Guide 1.76, "Design Basis Tornado for Nuclear Power Plants," describes a design basis tornado acceptable for each of three regions within the contiguous United States that a nuclear power plant should be designed to withstand.

Regulatory Guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. Comments and suggestions in connection with improvements in the guides are encouraged and should be sent to the Secretary of the Commission, U.S. Atomic Energy Commission, Washington, D.C. 20545, Attention: Chief, Public Proceedings Staff. Requests for single copies of issued guides or for placement on an automatic distribution list for single copies of future guides should be made in writing to the Director of Regulatory Standards, U.S. Atomic Energy Commission, Washington, D.C. 20545. Telephone requests cannot be accommodated. Regulatory Guides are not copyrighted and Commission approval is not required to reproduce them.

Other Division 1 Regulatory Guides currently being developed include the following:

Tornado Design Classification.
Availability of Electric Power Sources.
Requirements for Instrumentation to Assess Nuclear Power Plant Conditions During and Following an Accident for Water-Cooled Reactors.
Shared Emergency and Shutdown Power Systems at Multi-Unit Sites.
Isolation of Low Pressure Systems Connected to the Reactor Coolant Pressure Boundary.
Assumptions for Evaluating a Control Rod Ejection Accident for Pressurized Water Reactors.
Requirements for Collection, Storage, and Maintenance of Nuclear Power Plant Quality Assurance Records.
Requirements for Assessing Ability of Material Underneath Nuclear Power Plant Foundations to Withstand Safe Shutdown Earthquake.
Fire Protection Criteria for Nuclear Power Plants.
Protective Coatings for Light Water Nuclear Reactor Containment Facilities.
Inservice Surveillance of Grouted Prestressing Tendons.
Seismic Input Motion to Uncoupled Structural Model.
Primary Reactor Containment (Concrete) Design and Analysis.
Quality Assurance Requirements for Installation, Inspection, and Testing of Mechanical Equipment and Systems.
Quality Assurance Requirements for Installation, Inspection and Testing of Structural Concrete and Structural Steel.
Fracture Toughness Requirements for Vessels Under Overstress Conditions.
Material Limitations for Component Supports.
Protection Against Postulated Events and Accidents Outside of Containment.
Requirements for Auditing of Quality Assurance Programs for Nuclear Power Plants.
Assumptions Used for Evaluating the Potential Radiological Consequences of a Gas Holdup Tank Failure in a Boiling Water Reactor.
Quality Assurance Requirements for Procurement of Equipment, Materials, and Services.
Quality Assurance Requirements for Lifting Equipment.
Maintenance and Testing of Batteries.
Qualification of Class I Electrical Equipment.
Type Tests for Class IE Cables, Connections, and Field Splices for Nuclear Power Plants.
Seismic Qualification of Class I Electric Equipment.
Fracture Toughness Requirements for Materials for Class 2 and 3 Components.
Maintenance of Water Purity in PWR Secondary Systems.
Main Stream Line Sealing System Design Guidelines for Boiling Water Reactors.
Criteria for Heat-up and Cool-down Procedures.
Effects of Residual Elements on Predicted Radiation Damage.
Inservice Inspection and Testing of Steam Generators Tubing.
Component Design Criteria for Elevated Temperature Reactors.
Preoperational Testing of Emergency Core Cooling Systems for Pressurized Water Reactors.
Fuel Oil Supplies for Standby Diesel-Generators.
Assumptions Used for Evaulating the Habitability of a Nuclear Power Plant Control Room During a Postulated Toxic Chemical Release.
Assumptions Used for Evaluating the Potential Radiological Consequences of a Liquid Radioactive Waste System Accident.
Code Case Acceptability for ASME Section III Materials.
Sumps for Emergency Core Cooling and Containment Spray Systems.
Surveillance and Examination and Testing of Irradiated Fuel Rods.
Elevated Temperature Inservice Surveillance Tests for HTGR Plants.
Design Load Combinations for Component Supports.
Termination of Nuclear Reactor Operating Licenses.
Preoperational Testing of Instrument Air Systems.
Requirements for Containment Isolation.
Probable Maximum Storm Surge Flooding on Lakes and Sea Shores.
Requirements for Concrete Reactor Vessels and Containments (ASME Section III Division 2).
Instrument Span and Trip Setting.
Failed Fuel Detection System for Nuclear Power Plants.
Code Case Acceptability—ASME Section III Design and Fabrication.
Code Case Acceptability—ASME Section III Nonmetallic Materials.
Design, Qualification Test and Installation Requirements for Class 2 and 3 Safety-Related Pumps.
Seismic Response Combination of Modes and Spatial Components.
Analysis of Seismic Recorded Data.
Protection of Nuclear Power Plant Control Room Operators Against an Onsite Chlorine Release.
Self-Operated and Power Operated Safety-Related Valves Functional Specification.

(5 U.S.C. 522(a))

Dated at Bethesda, Maryland this 26th day of April, 1974.

For the Atomic Energy Commission.

LESTER ROGERS,
Director of Regulatory Standards.

[FR Doc.74-10472 Filed 5-7-74;8:45 am]

CIVIL AERONAUTICS BOARD

[Docket No. 25690]

OVERSEAS NATIONAL AIRWAYS, INC.

Austrian Airtransport Management Agreement; Notice of Indefinite Postponement of Prehearing Conference

Under date of April 25, 1974, counsel for ONA requested a postponement of further procedural steps in this proceeding pending determination of its motion filed under the same date to file an otherwise unauthorized document consisting of a petition for reconsideration of Order 74-3-121 setting this proceeding for hearing. ONA states that it has amended the Agreement with Austrian Airtransport to such an extent that it believes the Board may moot this proceeding.

Under date of April 30, 1974, the Flying Tiger Line Inc., which has filed a petition for leave to intervene, objected to the request of ONA to postpone further procedural steps. Pan American, Saturn Airways and the Bureau of Operating Rights have indicated that they would not comment on ONA's request.

ONA's request is granted. The prehearing conference originally to be held on May 9, 1974 (39 F.R. 13803, April 17, 1974), is hereby postponed indefinitely.

Dated at Washington, D.C., May 2, 1974.

[SEAL] ROBERT M. JOHNSON,
Administrative Law Judge.

[FR Doc.74-10583 Filed 5-7-74;8:45 am]

[Docket No. 23909 Order 74-5-14]

COMPANIA ECUATORIANA DE AVIACION, S.A.

Foreign Air Carrier Permit Applications; Statement of Tentative Findings and Conclusions and Order To Show Cause

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 2nd day of May, 1974.

By Order E-11734, approved August 26, 1957, the Board issued a foreign air carrier permit to Compania Ecuatoriana de Aviacion, S.A. (Ecuatoriana) authorizing the carrier to engage in foreign air transportation of persons, property and mail between Ecuador, the intermediate points Cali, Colombia and Panama City, Panama and the terminal point Miami, Florida. The permit did not include off-route charter authority.[1]

On October 15, 1971 Ecuatoriana filed an application for amendment of its permit so as to authorize the conduct of off-route charter operations pursuant to Part 212 of the Board's Economic Regulations.[2] Action on the application was deferred pending confirmation that U.S. carriers would enjoy similar rights in Ecuador.[3] It now appears that the Government of Ecuador has modified its regulations to accommodate U.S. carrier requests for charter authority.

Ecuatoriana has successfully performed its presently authorized services and currently operates five passenger flights and two cargo flights per week to Miami with its Electra equipment. The carrier has no record of violations. Moreover, off-route charter authority has been granted to foreign route carriers, on the basis of reciprocity, since the Board's decision in the Foreign Off-Route Charter Service Investigation, 27 CAB 196 (1958). Since it now appears that reciprocity exists for U.S. carriers in Ecuador, off-route charter authority should also be granted to Ecuatoriana.[4]

In view of the foregoing, the Board tentatively finds and concludes that: (a) it is in the public interest to amend the foreign air carrier permit held by Compania Ecuatoriana de Aviacion, S.A. so as to authorize the carrier to engage in off-route charter trips in foreign air transportation, subject to the terms, conditions and limitations prescribed by Part 212 of the Board's Economic Regulations; (b) Ecuatoriana is fit, willing, and able to provide the above-described foreign air transportation and to conform to the provisions of the Act and the rules, regulations, and requirements of the Board thereunder; and (c) the public interest requires that the exercise of the privileges that would be granted in Ecuatoriana's amended permit should be subject to the terms, conditions, and limitations contained in the attached proposed form of permit, and to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

Accordingly, *it is ordered*, That:

1. All interested persons be and they hereby are directed to show cause why the Board should not make final the tentative findings and conclusions herein, and why an amended foreign air carrier permit substantially in the form attached to this order should not be issued, subject to the approval of the President pursuant to section 801 of the Act;

2. Any interested person having objections to the tentative findings and conclusions set forth herein, or to the issuance of the proposed amended foreign air carrier permit, shall file such objections within 10 days after the date of service of this order, and file with the Board and serve on the persons named in paragraph 5 a memorandum of objection specifying the part or parts of the tentative findings and conclusions or permit objected to and stating the specific grounds of any such objections;[5]

3. If timely and properly supported objections are filed, full consideration will be accorded the matters and issues raised by the objections before further action is taken by the Board: *Provided*, That the Board may proceed to enter an order in accordance with the tentative findings and conclusions herein if it determines that there are no factual issues presented that warrant the holding of an evidentiary hearing;

4. In the event no objections are filed, all further procedural steps shall be deemed waived, and the Board may proceed to enter an order in accordance with the tentative findings and conclusions set forth herein; and

5. Copies of this order shall be served upon the following Compania Ecuatoriana de Aviacion, S.A. and Braniff International.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.[6]

[SEAL] EDWIN Z. HOLLAND,
Secretary.

[FR Doc.74-10585 Filed 5-7-74;8:45 am]

[Docket No: 22859 Order 74-5-16]

TRANS WORLD AIRLINES, INC.

Domestic Air Freight Investigation; Order of Suspension

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 3rd day of May, 1974.

By tariff revisions bearing the issue date of March 22, 1974, and marked to become effective May 6, 1974, Trans World Airlnes, Inc. (TWA) proposes to increase its domestic air freight rates as follows:

1. Cancel all westbound bulk and container specific commodity rates for all points, except from Miami and Tampa. For the latter points, some specifics will be canceled, some increased, and some retained at present levels;

2. Cancel all Type A-3 container rates and charges;

3. Cancel Type A container minimum charges for weights of less than 3,200 pounds; and

4. Increase the minimum charges for Type D containers to reflect an increased minimum chargeable weight from 500 to 575 pounds.

TWA's proposed cancellation of Type A minimum charges for containers below 3,200 pounds would result in rate increases of up to 2.3 percent. Minimum charges for Type D containers would be subject to increases of up to 10.4 percent.

In support of its proposal TWA contends, inter alia, that (1) the carrier is merely placing container minimum charges on the same basis as bulk traffic, 8.9 pounds per cubic foot;[1] (2) since

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[1] Ecuatoriana obtained its permit before the Board's decision in 1958 in the *Foreign Off-Route Charter Service Investigation*, 27 CAB 196. In that case the Board granted off-route authority only to the foreign air carriers which held permits in 1955 and were made parties when the Investigation was instituted. The Board said in the opinion that carriers which had received their permits in the meantime could apply for off-route authority under setcion 402. 27 CAB 196 (206, footnote 13)

[2] A copy of the application has been transmitted to the President in accordance with section 801 of the Federal Aviation Act.

[3] In the meantime Ecuatoriana's permit was amended so as to authorize the carrier to serve Bogota as an intermediate point on its route. (Order 73-2-13, approved February 1, 1973.)

[4] By Order to Show Cause, Order 74-3-71, March 15, 1974, Docket 26509, the Board proposed certain major revisions to Part 212 of its Regulations. Compania Ecuatoriana de Aviacion, S.A. was made a party to that proceeding and the revised permit proposed to be issued herein will be subject to any revisions to Part 212 ultimately adopted in Docket 26509.

[5] Since provision is made for the filing of objections to this order, petitions for reconsideration of this order will not be entertained.

[6] Specimen permit filed as part of original document.

[1] By prior filing, TWA had published the 8.9 pounds per cubic foot dimensional weight rule for bulk shipments, although the application of the rule to cut flowers was deferred to May 10, 1974. For Type A containers, however, TWA adjusts the 8.9 pounds to allow for a 20 percent stacking loss. Hence, the actual density upon which the proposed minimum charges is based is 7.1 pounds per cubic foot.

only 10.5 percent of Type A containers and 2.9 percent of Type D containers will be affected by the increase, the maximum average increase will be 0.21 and 0.19 percent, respectively; and (3) the proposal will generate an estimated $16,000 additional annual revenue and will encourage better utilization of container space by shippers.

In support of its proposed cancellation of westbound specific commodity rates, TWA contends that (1) westbound specific commodity rates generated only 2.33 percent of TWA's domestic air freight revenues in 1973; (2) assuming no diversion, this aspect of the proposal will have the effect of increasing TWA's domestic freight revenues by $129,000, or 0.22 percent of 1973 revenues; and (3) given the current fuel crisis and the increasing demand for capacity in the prime westbound direction, these rate discounts are no longer warranted.

The proposed rates and charges come within the scope of the Domestic Air Freight Rate Investigation, Docket 22859, and their lawfulness will be determined in that proceeding. The issue now before the Board is whether to suspend the proposal or to permit it to become effective pending investigation.

The TWA filings are one of a series of rate increases filed by domestic carriers in recent weeks. The Board has reviewed these proposed rates in the light of industry average costs of carrying air freight (including a full return on investment), which reflect recognition of the sharp increases in fuel costs recently experienced. Based upon those standards, certain of the proposed rates appear to exceed costs. Those rates include proposed increases in rates and charges for Type D containers generally with lengths of haul of 1,100 miles and over westbound and 2,300 miles and over eastbound, and in all specific commodity rates on human remains. In view of the foregoing and upon consideration of all other relevant factors, the Board finds that the proposal, to the extent it applies to such rates, and as indicated in detail in Appendix A,[1a] should be suspended.

The remaining portions of the proposal appear sufficiently related to costs that the Board will permit them to become effective. These include primarily increases in Type D container rates for distances below 1,100 miles west bound and 2,300 miles eastbound, cancellation of all Type A–3 container rates and charges, increasing the minimum weights and charges for Type A containers, and cancellation of most westbound bulk and container specific commodity rates. The proposed cancellation of specific commodity rates is being permitted, consistent with our previous disposition of similar proposals by other carriers,[2] because, in our opinion, carriers should be accorded considerable flexibility as to offering such rates, which are typically justified primarily on a value-of-service basis.[3]

Accordingly, pursuant to the Federal Aviation Act of 1958, and particularly Sections 204(a) and 1002 thereof,

It is ordered, That:

1. Pending hearing and decision by the Board, the increased rates, charges, and provisions described in Appendix A hereto are suspended and their use deferred to and including August 3, 1974, unless otherwise ordered by the Board and that no change be made therein during the period of suspension except by order or special permission of the Board; and

2. Copies of this order shall be filed with the tariff and served upon Trans World Airlines, Inc.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] EDWIN Z. HOLLAND,
Secretary.

[FR Doc.74–10586 Filed 5–7–74;8:45 am]

[1a] Appendix A filed as part of the original document.

[2] See, e.g., Orders 74–4–54 and 74–4–107.

[3] In its decision in Docket 22157, United Air Lines, Inc., Specific Commodity Rates on Periodicals, Floral Products, and Seafood, Order 72–11–78, November 20, 1972, the Board stated, "Because of their inherently preferential nature, the Board does not normally require carriers to publish SCR's, but leaves the offering and justification of SCR's to the carriers' initiative. Once a carrier institutes a particular SCR it is still afforded a fairly broad area of discretion in revising such rates between the parameters of fully-allocated and incremental costs, subject to the Board's review."

ENVIRONMENTAL PROTECTION AGENCY

LAKE MICHIGAN COOLING WATER STUDIES PANEL

Notice of Meeting

Pursuant to Public Law 92–463, notice is given that a meeting of the Lake Michigan Cooling Water Studies Panel will be held at 9:30 a.m. on May 23, 1974, in meeting rooms of the Seven Continents Restaurant, O'Hare International Airport, Chicago, Illinois.

The purpose of the meeting is to continue to review and revise the draft Program Report and Research Priorities lists for Lake Michigan Cooling Water Studies previously developed by the Panel.

The meeting will be open to the public. Any member of the public wishing to attend or submit a paper should contact the Executive Secretary, Mr. Howard Zar, Environmental Protection Agency, Region V, Enforcement Branch, 1 North Wacker Drive, Chicago, Illinois 60606.

The telephone number is area code 312–353–1470.

JOHN QUARLES,
Acting Administrator.

MAY 2, 1974.

[FR Doc.74–10591 Filed 5–7–74;8:45 am]

[OPP—32000/54]

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, SW., Washington, D.C. 20460.

On or before July 8, 1974, any person who (a) is or has been an applicant, (b) desires to assert a claim for compensation under section 3(c)(1)(D) against another applicant proposing to use supportive data previously submitted and approved, and (c) wishes to preserve his opportunity for determination of reasonable compensation by the Administrator must notify the Administrator and the applicant named in the FEDERAL REGISTER of his claim by certified mail. Every such claimant must include, at a minimum, the information listed in this interim policy published on November 19, 1973.

Applications submitted under 2(a) or 2(b) of the interim policy in regard to usage of existing supportive data for registration will be processed in accordance with existing procedures. Applications submitted under 2(c) will be held for the 60-day period before commencing processing. If claims are not received, the application will be processed in normal procedure. However, if claims are received within 60 days, the applicants against whom the particular claims are asserted will be advised of the alternatives available under the Act. No claims will be accepted for possible EPA adjudication which are received after July 8, 1974.

APPLICATIONS RECEIVED

EPA File Symbol 8743–U. Brainerd Chemical Company, Inc., 42nd and S. Sheridan, P.O. Box 45010, Tulsa, Oklahoma 74145. *Algae-Out Concentrate.* Active Ingredients: Poly[oxyethylene - (dimethyliminio)ethylene(dimethyliminio)ethylene dichloride] 60.0%. Method of Support: Application proceeds under 2(b) of interim policy.

EPA File Symbol 5719–AN. Chacon Chemical Corporation, 5245 Chakemco Street, South Gate, California 90280. *Chacon House Plant Insect Spray.* Active Ingredients: Pyrethrins 0.056%; Rotenone 0.024%; Other cube resins 0.048%; Petroleum distillate 0.224%. Method of Support: Application proceeds under 2(c) of interim policy.

EPA Reg. No. 7273–105. Crown Chemicals, 4995 North Main St., Rockford, Illinois 61101. *Crown Malvex Dry Fly Bait.* Active Ingredients: 2,2-Dichlorovinyl dimethyl phosphate 0.46%; Related Compounds 0.04%. Method of Support: Application proceeds under 2(c) of interim policy.

EPA File Symbol 30946–G. Eagle River Chemical Company, Highway 242, P.O. Box 2648, West Helena, Arkansas 72390. *Eagle River Propanil 4 Herbicide.* Active Ingredients: 3',4'-Dichloropropionanilide 43.48%. Method of Subpart: Application proceeds under 2(c) of interim policy.

EPA File Symbol 12477–G. Economy Service & Sales Co., 3511 N. 9th Street, Philadelphia, Pennsylvania 19140. *CP–10.* Active Ingredients: Poly[oxyethylene(dimethyliminio)ethylene - (dimethyliminio)ethylene dichloride] 10.0%. Method of Support: Application proceeds under 2(b) of interim policy.

EPA Reg. No. 4816–482. FMC Corporation, Agricultural Chemical Division, 100 Niagara Street, Middleport, New York 14105. *Aqueous Pyrenone Garden & Mosquito Spray.* Active Ingredients: Pyrethrins 0.02%; Piperonyl Butoxide, technical 0.20%; Petroleum distillate 0.08%. Method of Support: Application proceeds under 2(c) of interim policy.

EPA Reg. No. 5905–164. Helena Chemical Company, 5100 Poplar Ave., Suite 2900, Clark Tower, Memphis, Tennessee 38137. *Helena Brand MSMA Plus H. C. For Selective Post-Emergent Weed Control High Concentrate.* Active Ingredients: Monosodium Acid Methanearsonate 48.4%. Method of Support: Application proceeds under 2(c) of interim policy.

EPA File Symbol 33660–E. 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. *Simazine Technical.* Active Ingredients: 2 - chloro - 4,6-bis-(ethylamino)-s-triazine 95%. Method of Support: Application proceeds under 2(c) of interim policy.

EPA File Symbol 5967–RER. Moyer Chemical Company, 1310 Bayshore Highway, P.O. Box 945, San Jose, California 95108. *Moyer BHC 12–W.* Active Ingredients: Gamma isomer of Benzene Hexachloride 12.0%; Other isomers of Benzene Hexachloride 12.0%. Method of Support: Application proceeds under 2(c) of interim policy.

EPA File Symbol 5967–REE. Moyer Chemical Company, 1310 Bayshore Highway, P.O. Box 945, San Jose, California 95108. *Diazinon Dust No. 4.* Active Ingredients: O, O-diethyl O-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate 4.0%. Method of Support: Application proceeds under 2(c) of interim policy.

EPA File Symbol 5967–REN. Moyer Chemical Company, 1310 Bayshore Highway, P.O. Box 945, San Jose, California 95108. *Copper Dust No. 6.7.* Active Ingredients: Copper 6.7%. Method of Support: Application proceeds under 2(c) of interim policy.

EPA File Symbol 10462–U. Multi Chemical Products, Inc., G.P.O. Box 2380, San Juan, Puerto Rico 00936. *Diaciclon F–5 Concentrate Kills Roaches.* Active Ingredients: Refined Petroleum Distillate 90.03%; O, O, Diethyl-O (2 isopropyl)4 menthyl-6-pyrimidinyl phosphoronthioate 6.25%. Method of Support: Application proceeds under 2(c) of interim policy.

EPA File Symbol 10462–L. Multi Chemical Products, Inc., G. P. O. Box 2380, San Juan, Puerto Rico 00936. *Diaciclon F–7 Kills Flies, Mosquitoes and Roaches.* Active Ingredients: Petroleum Distillate 98.6125%; Piperonyl Butoxide 1.1875%. Method of Support: Application proceeds under 2(c) of interim policy.

EPA File Symbol 34269–E. Poolside, 1738 McMenemy Street, St. Paul, Minnesota 55117. *Poolside Algi-Rid.* Active Ingredients: Poly [oxyethylene (dimethyliiminio) ethylene (dimethyliimino) ethylene dichloride] 15.0%. Method of Support: Application proceeds under 2(b) of interim policy.

EPA File Symbol 34269–R. Poolside, 1738 McMenemy Street, St. Paul, Minnesota 55117. *Poolside Algi-Rid Concentrate.* Active ingredients: Poly[oxyethylene(dimethyliminio)ethylene(dimethyliminio)ethylene dichloride] 60.0%. Method of Support: Application proceeds under 2(b) of interim policy.

EPA File Symbol 655–LNE. Prentiss Drug & Chemical Co., Inc., 363 7th Ave., New York, New York 10001. *Prentox Redi-Use Mouse & Rat Bait.* Active Ingredients: Warfarin (3-(a-acetonylbenzyl)-4-hydroxycoumarin) 0.025%. Method of Support: Application proceeds under 2(c) of interim policy.

EPA File Symbol 655–LNL. Prentiss Drug & Chemical Co., Inc., 363 7th Ave., New York, New York 10001. *Prentox Redi-Use Mouse & Rat Bait RP for Repackaging of a Rodenticide.* Active Ingredients: Warfarin (3-a-acetonylbenzyl) - 4 - hydroxycoumarin) 0.025%. Method of Support: Application proceeds under 2(c) of interim policy.

EPA File Symbol 602–EUL. Ralston Purina Company, General Offices, Checkerboard Square, St. Louis, Missouri 63188. *Purina Diazinon Spray-11 12½%.* Active Ingredients: O,O-diethyl O-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate 12.5%; Xylene 40.2%; Petroleum distillate 40.15%. Method of Support: Application proceeds under 2(c) of interim policy.

EPA File Symbol 3509–RNR. Safe-Way Farm Products Co., 2519 East 5th Street, Austin, Texas 78762. *Safe-Way Brand Livestock Dust.* Active Ingredients: Toxaphene 5%; Sulphur 10%. Method of Support: Application proceeds under 2(c) of interim policy.

EPA File Symbol 11463–E. Schaefer Chemical Company, 3000 Carrollton Road, Saginaw, Michigan 48604. *Tower Treat.* Active Ingredients: Poly[oxyethylene(dimethyliminio) ethylene(dimethyliminio)ethylene dichloride] 30.0%. Method of Support: Application proceeds under 2(c) of interim policy.

EPA Reg. No. 538–11. O. M. Scott & Sons, Marysville, Ohio 43040. *Scotts Halts Brand Crabgrass Preventer.* Active Ingredients: S-(O,O-Diisopropyl phosphorodithioate) ester of *N*-(2-Mercaptoethyl) benzenesulfonamide 11%. Method of Support: Application proceeds under 2(c) of interim policy.

EPA File Symbol 11682–RT. Sim-Chem, Minerals and Chemicals Division, J .R. Simplot Company, P.O. Box 810, Mountain Home, Idaho 83647. *Sim-Chem Dibrom 8EC Naled Insecticide.* Active Ingredients. Naled 58%; Xylene 20%. Method of Support: Application proceeds under 2(c) of interim policy.

EPA File Symbol 11682–RI. Sim-Chem, Minerals and Chemicals Division, J. R. Simplot Company, P.O. Box 810, Mountain Home, Idaho 83647. *Sim-Chem Ethion 10% Granular an Agricultural Insecticide.* Active Ingredients: Ethion 10.00%. Method of Support: Application proceeds under 2(c) of interim policy.

EPA File Symbol 6720-EEN. Southern Mill Creek Products Co., Inc., P.O. Box 1096, Tampa, Florida 33601. *SMCP Pelletized Slug and Snail Bait.* Active Ingredients: 3,5-Dimethyl-4-(methylthio)phenol methylcarbamate 2%. Method of Support: Application proceeds under 2(c) of interim policy.

EPA File Symbol 6720-EEE. Southern Mill Creek Products Co., Inc., P.O. Box 1096, Tampa, Florida 33601. *SMCP Crumblized Slug and Snail Bait.* Active Ingredients: 3,5-Dimethyl-4-(methylthio)phenol methylcarbamate 2%. Method of Support: Application proceeds under 2(c) of interim policy.

EPA Reg. No. 476–2049. Stauffer Chemical Company, 1200 South 47th Street, Richmond, California 94804. *Sutan +7-E Emulsifiable Liquid Selective Herbicide for Corn.* Active Ingredients: *S*-Ethyl Diisobutylthiocarbamate 89.0%. Method of Support: Application proceeds under 2(b) of interim policy.

EPA File Symbol 476–ERLL. Stauffer Chemical Company, 1200 South 47th Street, Richmond, California 94804. *Vernan 7-E Emulsifiable Liquid—A Selective Herbicide.* Active Ingredients: *S*-Propyl Dipropylthiocarbamate 88.5%. Method of Support: Application proceeds under 2(b) of interim policy.

EPA File Symbol 476–ERLU. Stauffer Chemical Company, 1200 South 47th Street, Richmond, California 94804. *Eptan 7–E—Selective Herbicide Emulsifiable Liquid.* Active Ingredients: S-Ethyl Dipropylthiocarbamate 87.8%. Method of Support: Application proceeds under 2(b) of interim policy.

Correction

As stated in the Notice of Receipt of Applications for Pesticide Registration—Data To Be Considered in Support of Application [OPP–32000/47] published in the Federal Register on April 29, 1974 (39 FR 14990), the Administrator and the applicant named in the Federal Register must be notified of claims by certified mail within 60 days from the date said notice is published. This period ends on July 1, 1974, rather than July 29, 1974, as cited in the notice.

Republished Item

The following item represents a correction and/or change in the list of Applications Received previously published in the Federal Register of April 29, 1974 (39 FR 14990).

EPA File Symbol 3509–RNA. Safe-Way Farm Products Co., 2519 East 5th Street, P.O. Box 6309, Austin, Texas 78702. *Safe-Way Brand Scarlet Red Screwworm Bomb.* Active Ingredients: Gamma Isomer of Benzene Hexachloride (from Lindane) 2.66%. * * * Correction: Originally published as Benzene Hexochloride.

Dated: May 2, 1974.

JOHN B. RITCH, Jr.,
Director, Registration Division.

[FR Doc.74–10594 Filed 5–7–74;8:45 am]

WATER QUALITY CRITERIA AND INFORMATION

Extension of Time for Comment

On October 26, 1973 (38 FR 29646), the Agency published a notice that proposed Water Quality Criteria (Vol. I) had been published. Subsequently, on October 29, 1973 (38 FR 29836), the Agency published a notice that proposed Water Quality Information (Vol. II) had been published.

The two companion volumes were published pursuant to Section 304(a) (1) and (2) of the Federal Water Pollution Control Act (33 U.S.C. 1251); 86 Stat. 816 (Pub. L. 92–500). A period of 180 days was specified within which interested members of the public were invited to submit written comments on the proposed Criteria and Information Volumes. That period expired on April 26, 1974.

The Agency anticipated that copies of both the Criteria and Information volumes would be available to the public throughout the comment period. Production difficulties, however, delayed publication and general distribution of the reports. Because of the length, complexity and importance of the proposed criteria, and the Agency's desire to encourage informed and thoughtful public participation in their final promulagation, the Agency believes that members of the public should have access to the supporting documents on which the proposed criteria were based for a more substantial time period in which to formulate meaningful comments. Accordingly, the final date for submission of comments on the Criteria and Information Volumes is hereby extended to and including July 1, 1974.

CHARLES L. ELKINS,
Acting Assistant Administrator for Water and Hazardous Materials.

[FR Doc.74-10590 Filed 5-7-74;8:45 am]

FEDERAL COMMUNICATIONS COMMISSION

[FCC 74-464]

DOMESTIC PUBLIC LAND MOBILE RADIO SERVICE

Extension of Time for New Procedures on Petitions To Deny Applications

MAY 2, 1974.

On April 17, 1974 we adopted new procedures (see Public Notice 10980) whereby existing licensees who had protested the entry of new applicants into the same market on grounds of economic competition, were to have their renewal applications designated for hearing together with the proposals of the applicants. The hearing was to determine first, whether the particular market could support an additional carrier, and if not, the hearing was to proceed on a comparative basis to establish whether grant of the new application or grant of the existing licensee's renewal application would best serve the public interest. May 1, 1974 was the date by which all economic protests had to be withdrawn in order to escape a designation order.

We now find that the May 1, 1974 withdrawal deadline is unreasonable. It will be necessary for many licensees to consult with counsel before reaching a decision whether to maintain their protests or to withdraw. In addition, several petitions have been filed requesting additional time and also questioning the propriety of our original public notice Time will be required to evaluate the comments contained therein.

Accordingly, the date by which all economic protests must be withdrawn in order to escape designation is hereby extended to June 1, 1974. By that time we shall have decided upon the merits of petitions filed in response to the original public notice; and those existing licensees with protests presently on file will have had the opportunity to consult with counsel. Pending further action, all renewal applications shall be held in abeyance.

Action by the Commission acting as a Board, May 1, 1974. Commissioners Wiley (Chairman) and Hooks, with Commissioner Reid concurring and Commissioner Quello not participating.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] VINCENT J. MULLINS,
Secretary.

[FR Doc.74-10601 Filed 5-7-74;8:45 am]

[FCC 74-441; Docket Nos. 20025, 20026; File Nos. BR-4354, BRH-1709]

LEFLORE BROADCASTING COMPANY, INC., AND DIXIE BROADCASTING COMPANY, INC.

License Renewal Applications; Hearing

In re applications of Leflore Broadcasting Company, Inc. (WSWG-AM), Greenwood, Mississippi, Docket No. 20025, File No. BR-4354; Dixie Broadcasting Company, Inc. (WSWG-FM), Greenwood, Mississippi, Docket No. 20026, File No. BRH-1709; For renewal of license.

1. Now under consideration are: the captioned applications; a petition to deny the application of Leflore Broadcasting Company, Inc. (Leftflore), filed January 10, 1973, by the Greenwood Communications Committee, an unincorporated association of persons in Greenwood, and by James Moore, Jake McGhee and Martha Cooley, individually and as members of the Committee; an opposition filed March 14, 1973 by Leflore; a reply filed April 10, 1973, by the petitioners; our field investigation into the operation of Station WSWG(AM); the matters left unresolved in our decision in Leflore Broadcasting Company, Inc., 36 FCC 2d 101, 24 RR 2d 953 (1972); a petition to deny the application of Dixie Broadcasting Co., Inc. (Dixie), filed May 1, 1973, by the Greenwood Communications Committee and by James More, Jake McGhee and Martha Cooley, individually and as members of the Committee; an opposition filed June 4, 1973, by Dixie; and related pleadings.[1]

2. We find that the petitioners, as a group of concerned listeners residing in the Greenwood area, are parties in interest within the meaning of section 309 (d) of the Communications Act, Office of Communication of the United Church of Christ v. FCC 359, F. 2d 994, RR 2d 2001 (D.C. Cir. 1966).

3. In regard to the AM application, Leflore contends that some of the petitioners' allegations are not "supported by affidavit of a person or persons with personal knowledge" of the facts as required by section 309(d) of the Act. In Leflore Broadcasting Company, Inc., 37 FCC 2d 655 (1972), we considered a motion filed by the petitioners for clarification or reconsideration of our first decision in this matter. We there stated:

> * * * in the ordering clauses of the first decision, we did not dispose of all matters raised in (the petitioners') pleadings. Specifically, we left open three questions that were raised by the various pleadings. The petitioners need not plead their case a second time as to those questions. (37 FCC 2d at 655)

We recognize that the list of petitioners filing the prior pleadings is not identical with the present list. Nonetheless, since some individuals appear in both lists, we believe that the present petitioners can lay claim to the material and documents included in the prior pleadings, since the same issues are raised. The prior pleadings are supported by appropriate affidavits as to matters that we can not officially notice. We conclude, therefore, that the present pleadings meet the requirements of section 309(d) of the Act.

4. The background of this proceeding, insofar as it pertains to the AM station, is set out more fully in our first decision (see 36 FCC 2d 101). Briefly stated, however, Leflore, in preparing its 1970 renewal application, conducted a survey and found a need for entertainment and non-entertainment programming directed toward the area's black community.[2] Leflore proposed to meet those needs in its application, which was granted July 14, 1970. The entertainment format was to be rhythm-and-blues music, which was selected in light of an audience preference survey. On March 8, 1971, Leflore changed its entertainment format to country-and-western music[3] and fired three black announcers. These actions resulted in the filing of the pleadings we considered in our prior decisions in this matter. Based on those pleadings, and on the findings of our own field investigation, we called for the early filing of Leflore's renewal application, and stated that based on the information then before us, we had the following questions concerning Leflore's operation of Station WSWG:

(a) Whether the licensee has carried out in good faith the representations made in its 1970 renewal application as to proposed non-entertainment programming, particularly with respect to the programming directed toward meeting the problems and needs of the Black community;

(b) Whether in light of the licensee's performance in carrying out its repre-

[1] The related pleadings are motions for extensions of time to file opposition and reply pleadings, which are hereby granted.

[2] The non-white community constitutes 50.4 percent of the population of Greenwood and 58.3 percent of the population of Leflore County, where Greenwood is located.

[3] The country-and-western format was subsequently dropped on May 3, 1971, when WSWG and WSWG-FM began simulcasting the middle-of-the-road format that WSWG-FM previously had been broadcasting. Leflore has provided no information indicating that these changes in format were preceded by a survey indicating that these had now become the preferred formats, in place of the preference for rhythm-and-blues music that had been found in its prior survey.

sentations in its renewal application and subsequent written statements to the Commission, the licensee made misrepresentations to the Commission in its 1970 renewal application or those statements; and

(c) Whether the licensee has violated § 73.125 of our rules.

See 36 FCC 2d at 104. After reviewing all the pleadings and the renewal application, we believe that these questions still remain and that a hearing is required.

5. Financial hardship is the only basis that Leflore has set forth as a reason for the entertainment format change. Based on the information then before us, we stated in our first decision that we would not make inquiry as to the change in format in light of Leflore's apparently poor financial position, 36 FCC 2d at 103. We did, however, make available to the petitioners the Annual Financial Reports (FCC Form 324) for WSWG so that they could file any comments they thought appropriate as to WSWG's financial position. Moreover, because Stations WSWG (AM) and WSWG–FM shared the same facilities and employees, and because the two stations were identically owned and controlled, although licensed to separate corporations, the Form 324's for Station WSWG–FM were also made available to the petitioners. The petitioners now raise a question as to a misallocation of costs between the AM and FM operations that may have distorted the losses of WSWG (AM) when using the rhythm-and-blues format. In opposition, Leflore has submitted a letter from its certified public accountants to establish that the AM station sustained losses and that costs were reasonably allocated between the licensee of the two stations. However, the letter is neither addressed to the Commission nor in affidavit form. There is also an inconsistency between this letter and a prior letter provided by the same accountants, which raises questions as to the reliability of the information provided in the letters. Earlier, the accountants stated that the salary of Vice-President and General Manager James McCullough was paid entirely by the FM station. In the present letter, it is stated, in reference to the same time period, that the General Manager's salary was shared by the AM and FM operations. The percentage paid by each station is not indicated. The petitioners also raise questions as to the payments made to McCullough and C. D. Saunders. Saunders is President and 75 percent owner of both licensees. For example, Leflore and Dixie claimed greater combined losses ($73,777) in 1971, the year the AM station's format was changed, than in any previous year. Yet 1971 was the first year since the acquisition of WSWG(AM) that payments were made to Saunders. McCullough's salary has also been increasing substantially during years when the combined operations were losing money. His salary in 1971 was more than $7,000 higher than his salary in 1969. That increase, the payments to Saunders and the discrepancies in the accountant's statements raise a question as to whether the losses claimed are as great as indicated by Leflore. Because the losses are the only basis put forward by Leflore for changing from a format apparently preferred by a substantial portion of the area's residents, and because the change in format resulted in a substantial reduction in the availability of the preferred format, we believe that Leflore's representations that the change in format was financially necessary should be explored in hearing.

6. Leflore represented in its 1970 renewal application that 5.1 percent of a typical broadcast week would be public affairs programming. Only 0.9 percent (43 minutes) of the composite week, according to Leflore, was in fact public affairs programming. Moreover, its logs show only a 5-minutes program on June 21, 1971, as being logged as public affairs. Although not so stated in its logs, Leflore elsewhere indicates in its application, that it considers a program entitled "Self Expression Time" to be public affairs programming. Nonetheless, even if that program is included in the total amount of time during the composite week, we are able to find only a total of about 17 minutes of programming classified by the licensee as public affairs. Pursuant to Question 3(B), Section IV–A of the application form, Leflore has also submitted an analysis of its logs, but not the logs themselves, for the month of March, 1972, which it believes to be more representative than the composite week. During that month, Leflore states that 2.62 percent of its programming fell in the public affairs category which is still substantially below the amount represented in the 1970 application. In this respect, we note that in a list of programs broadcast during the last license term that the licensee believes served the needs and interests of the area, Leflore has classified several programs as public affairs which do not appear to fall in that category.[4] Specifically, programs entitled "Winter Carnival Day," "Greenwood Week," and "Miss Hospitality Pageant," based on the descriptions given, apparently should have been classified as "other" programming, not as public affairs. Thus, on the basis of information submitted, we have no assurance that Leflore broadcast even the 2.62 percent public affairs programming during March, 1972 as indicated in its analysis. Accordingly, a question is raised concerning Leflore's representations in its 1970 renewal application and its efforts to implement those representations.

7. The petitioners have requested that additional program logs be made available to the petitioners so that they may analyze them, and that they be afforded additional time to supplement their petition upon the completion of that analysis. However, such logs are subject to appropriate motions for discovery prior to hearing, and we believe such motions are more appropriate than further delaying the institution of this proceeding.

8. The materials in the pending renewal application and in the various pleadings have not resolved the questions we have about the operation of WSWG (AM), see paragraph 4, above. In view of these questions, we are unable to find that a grant of the renewal application would serve the public interest, convenience and necessity, and must, therefore, designate the application for hearing.

9. WSWG–FM is licensed to Dixie Broadcasting Co., Inc. whose ownership and control is identical to that of Leflore Broadcasting Company, Inc., licensee of WSWG(AM). The renewal applications for both stations indicate that during the last renewal period the two stations have been operated jointly and their programming is presently being simulcast during the hours of AM operation. The renewal applications and the various pleadings relating to the licensees' employment practices further indicate that the licensees consider the staffs of both stations to be a combined one. Therefore, any conclusions with respect to the employment discrimination and misrepresentation issues raised above will be equally applicable to Dixie. In addition, the Greenwood Communications Committee, *et al.*, filed a petition to deny the renewal of WSWG–FM alleging that the licensee had failed to seek out representative black leaders in its ascertainment efforts, had failed to propose programming to meet the needs and interests of its service area and had discriminated in its employment practices. As previously noted, the applicant's compliance with § 73.125 of the Commission's rules is already in issue, and the allegations of employment discrimination with regard to the FM station therefore require no further discussion.

10. In its opposition filed June 4, 1973, Dixie asserts that the Petition to Deny was filed without benefit of a supporting affidavit and should therefore be summarily dismissed. Dixie further contends that the petitioners have failed to allege sufficient facts to support the allegations of the Petition to Deny and that there is no factual basis to those allegations. The Petition to Deny indicates that an affidavit of verification would be forthcoming, but it does not appear that the necessary affidavit was ever filed. The Petition to Deny must therefore be dismissed pursuant to § 1.580(i) of the Commission's rules. However, the Petition to Deny raises serious public interest questions of the most basic nature, and, to the extent that these allegations rest of matters that can be officially noticed by the Commission, they will be discussed herein.

11. With regard to ascertainment, the petitioners allege that in spite of the fact that the population of Leflore County is

[4] Form 303, used for renewal applications, defines "Public Affairs" as including "talks, commentaries, discussions, speeches, editorials, political programs, documentaries, forums, panels, round tables and similar programs primarily concerning local, national and international public affairs."

approximately 67 percent black.[5] Dixie interviewed 35 black and 38 white community leaders, and the general public interviews consisted of 368 white and 278 black contacts with an additional 234 contacts unidentified as to race. Petitioners further assert that the station ignored certain local black leaders which, petitioner implies, would have given Dixie a different picture of the problems, needs, and interests of the area. However, petitioners have failed to plead specific facts to indicate which black leaders of significant groups within the community should have been contacted and what additional problems would thereby have been ascertained. Further, the "Primer on Ascertainment of Community Problems by Broadcast Applicants," 27 FCC 2d 650, 36 FR 4029 (1971) does not require applicants to contact community leaders or members of the general public in exact proportions to the various minority groups within an area. As previously indicated, non-whites constitute 50.4 percent of the population of Greenwood and 58.3 percent of the population of Leflore County. It therefore does not appear that Dixie has been unreasonable in the number of interviews conducted of black community leaders and members of the general public.

12. Petitioners allege that Dixie's program proposal fails to serve adequately the needs and interests uncovered in the licensee's survey. Exhibit 5 of Dixie's renewal application purports to set forth the programs proposed to meet the needs ascertained. Eight programs are listed, but three of these programs (Editorials, City and Area Promotions, and How's Your Health) are proposed at "varied times" without specific frequency, time or duration. Another program, Mississippi Valley State College, is proposed "monthly" without a scheduled time or duration, and the description of that program does not reveal its form, format, or how or what community problems would be dealt with in the program. Further, Dixie's Black History program is scheduled daily for 90 seconds, but Dixie has failed to indicate the time of day of that broadcast. The remaining three programs, (Self Expression Time, Goodwill Bulletin Board, and Issues and Answers) are proposed with the requisite frequency, time, and duration, but the weekly duration of these programs differs markedly from the applicant's program proposal as set forth in other parts of its renewal application. Exhibit 8 to Dixie's renewal application indicates that these programs are considered public affairs[6] and in response to paragraph 14 of Section IV–B, Dixie indicates that it proposes 3 hours 8 minutes of public affairs programs during the typical week. However, these three programs, for which specific frequency, time, and duration are given, add up to at least 5 hours 54 minutes of "public affairs" programs per week.[7] This discrepancy raises a question as to whether Dixie intends to broadcast these programs are proposed.[8] We further note that two of the three specifically proposed programs (Self Expression Time and Goodwill Bulletin Board) are 90 seconds or less in duration. Based on Dixie's descriptions of these programs, however, it is difficult to determine whether they are public affairs programs designed to serve ascertained community problems. We, therefore, find that Dixie's program proposal raises a substantial question as to exactly what the licensee proposes to broadcast and whether the programs proposed are adequately designed to meet those ascertained needs and interests with which the licensee intends to deal; and, thus, an appropriate issue will be added. Since WSWG (AM) and FM now simulcast, the question is equally applicable to the proposed programming of WSWG(AM).

13. *Accordingly, It is ordered,* That pursuant to section 309(e) of the Communications Act of 1934, as amended, the captioned applications are designated for hearing in a consolidated proceeding, at a time and place to be specified in a subsequent order, upon the following issues:

(1) To determine whether Leflore Broadcasting Company, Inc., has carried out in good faith the representations made in its 1970 renewal application as to proposed non-entertainment programming;

(2) To determine in light of the evidence adduced under the preceding issue, whether the applicant made misrepresentations to the Commission or was lacking in candor;

(3) To determine whether the applicants or their principals made misrepresentations to the Commission or were lacking in candor in other written submissions to the Commission;

(4) To determine whether the applicants violated § 73.125 or § 73.301 of the Commission's rules;

(5) To determine whether the change in entertainment format on WSWG(AM) was, as claimed by the licensee, financially necessary;

(6) To determine the extent and nature of the applicants' proposed non-entertainment programming and whether that proposal adequately serves the ascertained problems, needs and interests of the community, as evaluated;

(7) To determine, in light of the evidence adduced under the preceding issues, whether the applicants have the requisite qualifications to be or to remain Commission licensees, and whether a grant of the applications would serve the public interest, convenience and necessity.

14. *It is further ordered,* That Johnny W. Williams, Theodore Hill, Jr., George Davis, W. S. Lee, Jr., Martna Cooley, Jake McGhee, James Moore, the Greenwood Movement and the Greenwood Communications Committee are made parties respondent to this proceeding.

15. *It is further ordered,* That the Chief of the Broadcast Bureau shall serve upon the captioned applicants, within thirty (30) days of the release of this document, a Bill of Particulars with respect to issues (1) through (4), inclusive, as to allegations of fact and information in his possession not alleged by the petitioners.

16. *It is further ordered,* That the parties respondent proceed with the initial presentation of evidence with respect to issues (1) through (6), inclusive, that the Chief of the Broadcast Bureau present the evidence described in the Bill of Particulars with respect to issues (1) through (4), inclusive, and that the applicants then proceed with their evidence and have the burden of establishing that they possess the requisite qualifications to be and to remain licensees of the Commission and that a grant of the applications would serve the public interest, convenience and necessity.

17. *It is further ordered,* That the applicants and the parties respondent shall file a written appearance stating an intention to appear and present evidence on the specified issues, within the time and in the manner required by § 1.221(c) of the Commission's rules.

18. *It is further ordered,* That the applicants shall give notice of the hearing within the time and in the manner specified in § 1.594 of the rules, and shall seasonably file the statement required by § 1.594(g).

Adopted: April 17, 1974.

Released: May 2, 1974.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] VINCENT J. MULLINS,
Secretary.

[FR Doc.74–10602 Filed 5–7–74;8:45 am]

[5] The petition does not disclose the source of this 67 percent figure. See footnote three, above.

[6] Questions as to the proper classification of public affairs programs were raised in paragraph 6, above.

[7] The total of 5 hours 54 minutes is based on 60 seconds for Self Expression Time and Goodwill Bulletin Board, each broadcast every hour during a 162 hour week. No commercial time was deducted from these programs due to their short duration. Commercial time at the rate of 20 minutes per hour was deducted from Issues and Answers.

[8] An even larger discrepancy results when other less specifically proposed programs, also classified as public affairs by the licensee, are considered.

FEDERAL MARITIME COMMISSION

[Docket No. 72–17 (Sub No. 1)]

NORTH ATLANTIC POOL

Order of Investigation and Hearing

In the matter of Agreement No. 10,000–1—Amendment of North Atlantic Pool.

Agreement No. 10,000 is a revenue pooling agreement among seven containership operators, American Export Lines, Inc. (AEL),[1] Atlantic Container Line, Ltd. (ACL), Dart Containerline Company, Ltd. (Dart), Hapag-Lloyd AG (HL), Sea-Land Service, Inc. (Sea-Land), Seatrain Lines, Inc./Seatrain International, S.A. (Seatrain) and United States Lines, Inc. (USL), common carriers in the North Atlantic Trade, i.e., the trade between United States North Atlantic ports north of Cape Hateras and Atlantic ports in Europe north of and including Bayonne to the North Cape and

[1] American Export Isbrandtsen Lines, Inc. (AEIL) at the time Agreement No. 10,000 was signed.

ports in the Baltic, Scandinavia, United Kingdom and Eire.

Agreement No. 10,000 was filed for approval on November 28, 1971, and is the product of 12 months' negotiations among the carriers conducted pursuant to Agreement No. 9899, the "Talking Agreement", which was approved by the Commission on November 24, 1970.

Notice of the filing of Agreement No. 10,000 generated 21 comments, two of which requested a hearing on the proposed agreement. By Order of Investigation served May 5, 1972, the Commission instituted Docket No. 72–17 to determine whether Agreement No. 10,000 should be approved, disapproved or modified pursuant to section 15 of the Shipping Act, 1916. Nineteen parties participated in 40 days of hearings, which produced a transcript of 4993 pages and 107 exhibits. An initial decision was issued by the then Chief Administrative Law Judge, C. W. Robinson, on December 10, 1973, approving Agreement No. 10,000 with conditions.

Exceptions to the Initial Decision were filed by various of the parties on February 26, 1974, and Replies to Exceptions were filed on April 12, 1974.

On March 1, 1974, the signatories to Agreement No. 10,000 filed a document which came to be designated Agreement No. 10,000–1, which proposed to amend Article 15.3 of Agreement No. 10,000 to read as follows:

> 15.3. Upon approval of the Agreement [viz., North Atlantic Pool Agreement—FMC Agreement No. 10,000] by the Federal Maritime Commission, the Pool Lines shall have a period of six (6) months to develop an overall rationalization plan reflecting the sailing and service obligations of each Member Line. Any Member Line may withdraw from the Agreement for any reason at any time during this period without prejudice and without any liability to the other lines by giving two weeks written notice of its intention to do so to the Pool Coordinator. This Subarticle shall be considered a basic part of the Pool Agreement and any approval by the Federal Maritime Commission which shall not include an approval to this Subarticle shall be considered unacceptable to the Member Lines and will therefore vitiate the Agreement. In the event of any withdrawal during this first 180-day period the penalty provisions of Subarticle 15.1 shall not be applicable, nor shall any of the other provisions of the Pool Agreement be effective.

Article 15.3 presently provides:

> 15.3. If satisfactory progress should not be made in the rationalization of sailings and in the evolvement of service obligations, notwithstanding any other provisions in this Agreement, during the first 180 days following initiation of the Pool Agreement any Member Line may withdraw from the Agreement by giving two weeks' written notice to the Pool Coordinator. In the event of any withdrawal during this first 180-day period the penalty provisions of Subarticle 15.1 shall not be applicable, nor shall any of the other provisions of the Pool Agreement be effective.

The proposed Article 15.3 is consistent with the conditional approval granted Agreement No. 10,000 by the initial decision wherein Judge Robinson found that:

> The agreement should be approved in principle, final approval to be conditioned on the filing within six months of a rationalization plan and the acceptance of specified conditions (Initial Decision, p. 118).

Additionally, the nebulous phrase "satisfactory progress * * * in the rationalization of sailings, and the evolvement of service obligations" of the present Article 15.3 is replaced in the proposed Article 15.3 by making it clear that "The Pool Lines shall have a period of six (6) months to develop an overall rationalization plan reflecting the sailing and service obligations of each Member Line."

The Massachusetts Port Authority (Massport) an intervenor and active participant in Docket No. 72–17 filed a "Statement of Position" opposing Agreement No. 10,000–1 on March 29, 1974.

Massport's statement requests that the Commission disapprove Agreement No. 10,000–1 "as a matter of law", and that if the Commission does not do so, that it set Agreement No. 10,000–1 for a hearing or reopen Docket 72–17 to consider six issues set forth in the statement.

On April 12, 1974, the Federal Maritime Commission received a letter (Appendix A) from N. S. Thompson, Chairman, Atlantic Container Line, Ltd. (ACL) one of the signatories to Agreement No. 10,000. The letter stated that ACL was conditionally withdrawing from Agreement No. 10,000, but also stated that the withdrawal would be rescinded upon Commission approval of the amendment to Article 15.3, i.e., Agreement No. 10,000–1.

On April 23, 1974, the Commission received a letter from the attorney for the signatories to Agreement No. 10,000 (Appendix B) stating, inter alia, that the signatories to Agreement No. 10,000 regard the Agreement and the amendment thereto (Agreement No. 10,000–1) as "integral parts of a comprehensive understanding, in the sense that Agreement No. 10,000 is not offered for approval unless Agreement No. 10,000–1 is to be approved simultaneously", and requesting that the Commission express its concurrence that Agreements Nos. 10,000 and 10,000–1 constitute the complete Pool Agreement before the Commission, by reopening the record in Docket No. 72–17 to afford the parties a hearing limited to the issues raised by Agreement No. 10,000–1. The letter also advised that ACL intended to rescind its conditional withdrawal notice upon issuance of the Commission's Order reopening the record in Docket No. 72–17, as requested.

It is clear that, in view of the circumstances detailed above, before Agreement No. 10,000–1 can be approved, disapproved or modified by the Commission pursuant to section 15 of the Shipping Act, 1916, (46 U.S.C. 841) a hearing should be held to afford parties wishing to do so an opportunity to adduce evidence in support of or in opposition to the approval of Agreement No. 10,000–1.

While we do not seek to limit the scope of the case which any party may wish to present at such hearing, we consider that among those issues listed in the "Statement of Position" of Massport which are novel to the question of the approvability of Agreement No. 10,000–1 (as distinct from issues raised in Docket No. 72–17 and now before the Commission, e.g., questions concerning the meaning of the present Article 15.3), are (1) what progress has been made by the signatories to Agreement No. 10,000 and Agreement No. 10,000–1 in arriving at a rationalization plan; (2) why Commission disapproval of Agreement No. 10,000–1 would vitiate Agreement No. 10,000.

Also, it is not clear from Agreement No. 10,000 or Agreement No. 10,000–1 whether withdrawal of one or more of the signatories to Agreement No. 10,000 prior to final Commission action thereon would vitiate the entire agreement.

Article 10.2 of Agreement No. 10,000 provides in pertinent part:

> * * * if a Member Line's rights under this Pool Agreement should be otherwise terminated, then its Basic Percentage Entitlement shall be reassigned forthwith to other Member Lines pro rata to their respective Basic Percentage Entitlements immediately prior to the termination of the business or of the rights.

Article 20.1 of Agreement No. 10,000 provides:

> This Pool Agreement and any amendment thereof shall be submitted for approval to the appropriate government Authorities and shall become effective when it has been submitted and approved by those Authorities; however, the Pool Agreement and any amendment thereof shall not become effective if any conditions of approval are not acceptable to the parties signatories hereof.

Moreover, Article 15.3 as amended by Agreement No. 10,000–1 permits any signatory to Agreement No. 10,000 to withdraw during the six-month period requested for development of the rationalization plan. The Commission, therefore, will require evidence from the proponents on the question of withdrawal by a signatory during the executory phase of Agreement No. 10,000 and the effect such withdrawal would have on Agreement No. 10,000:

Now, therefore, *it is ordered*, That the Commission on its own motion enter upon an investigation and hearing, pursuant to Sections 15 and 22 of the Shipping Act, 1916, to determine whether Agreement No. 10,000–1 should be approved, disapproved, or modified, pursuant to Section 15 of the said Act;

It is further ordered, That the proceeding hereby instituted include an investigation as to whether Agreement No. 10,000, as amended, makes provision for the continuation of the Agreement in the event of withdrawal of one of signatories during the executory phase of the Agreement or whether such withdrawal would vitiate the entire Agreement;

It is further ordered, That American Export Lines, Inc., Atlantic Container Line, Ltd., Dart Containerline Company, Ltd., Hapag-Lloyd AG, Sea-Land Service, Inc., Seatrain Lines, Inc/Seatrain International, S.A., and United States Lines, Inc., listed in Appendix C hereto,

are hereby made respondents in this proceeding;

It is further ordered, That the Massachusetts Port Authority be made petitioner in this proceeding;

It is further ordered, That a public hearing be held in this proceeding and that the matter be assigned for hearing and decision by an Administrative Law Judge at a date and place to be hereafter determined and announced by the presiding Administrative Law Judge;

It is further ordered, That insofar as Docket No. 72–17 is now before the Commission on Replies to Exceptions, and because Agreement No. 10,000–1 is a critical component of Agreement No. 10,000, the presiding Administrative Law Judge expedite this proceeding to the fullest extent possible;

It is further ordered, That in order to avoid delay and duplication of effort, the parties to this proceeding shall have full use, for purposes of this proceeding, of the entire record in Docket No. 72–17;

It is further ordered, That the provision of 46 CFR 502.201(b) requiring leave of the Commission to take testimony by deposition if notice thereof is served within 20 days of commencement of the proceeding, and the provision of 46 CFR 502.206(c) requiring leave of the Commission to serve interrogatories if notice thereof is served within 20 days of commencement of the proceeding, are hereby waived;

It is further ordered, That notice of this Order be published in the FEDERAL REGISTER, and that a copy thereof and notice of hearing be served upon respondents and petitioner, as shown in the Appendix.

It is further ordered, That any person other than respondents and petitioner, having an interest and desiring to participate in this proceeding, shall file a petition for leave to intervene in accordance with Rule 5(1) (46 CFR 502.72) of the Commission's Rules of Practice and Procedure;

It is further ordered, That all future notices, orders and/or decisions issued by or on behalf of the Commission in this proceeding, including notice of the time and place of hearing or prehearing conference, shall be mailed directly to all parties of record.

By the Commission.

[SEAL] FRANCIS C. HURNEY,
Secretary.

APPENDIX A

MR. FRANCIS HURNEY,
Secretary,
Federal Maritime Commission,
1100 L Street NW.,
Washington, D.C. 20573

DEAR SIR,

APRIL 12, 1974.

Agreement 10,000—North Atlantic Pool Agreement

Replies to exceptions in Docket 72–17 will be due April 12th. After such deadline we understand that Agreement 10,000 will be officially before the Commission for approval. If approved it will take effect according to its terms, and no party will thereafter be permitted to withdraw (except for specifically stated reasons) without incurring liability to the remaining pool members for a two million dollar penalty.

Atlantic Container Line Limited finds itself unable to make a final commitment at this time to participate in the pool. Such difficulty stems from changed circumstances occurring since Agreement 10,000 was executed on November 17, 1971. As a result of such changes, a commitment at this time to remain in the pool could subject ACL to financial and competitive risks which it could not prudently assume.

With an assured period of six months following approval in which to make a decision, ACL might find that adherence to the pool was feasible. Accordingly ACL proposed, and the pool signatories have filed, an Agreement amending Article 15.3 of Agreement 10,000 to allow six months after approval in which any pool member could withdraw for any reason without penalty. The pool signatories have requested prompt approval of such amendment, but the Commission has been unable to assure a decision thereon before the deadline for filing exceptions.

In these circumstances ACL has no choice but to withdraw from Agreement 10,000 which we hereby do. If satisfactory to the Commission, we will rescind our withdrawal upon approval by the Commission of the pending amendment to Article 15.3.

This notice is transmitted with regret, since we are reluctant to impair the prospect for a pool on the North Alantic, but in the absence of any assured further period in which to forecast its effect, we feel that we have no alternative.

Yours faithfully,

ATLANTIC CONTAINER LINE, LTD.,
N. S. THOMPSON,
Chairman.

APPENDIX B

FRANCIS C. HURNEY, Esq.,
Secretary, Federal Maritime Commission,
1100 L Street NW.,
Washington, D.C. 20573

Re: FMC Docket No. 72–17, *North Atlantic Pool Agreement.*

APRIL 23, 1974.

DEAR MR. HURNEY: The signatories to the North Atlantic Pool Agreement (Agreement No. 10,000) regard that agreement and the pending amendment thereto (Agreement No. 10,000–1) as integral parts of a comprehensive understanding, in the sense that Agreement No. 10,000 is not offered for approval unless Agreement No. 10,000–1 is to be approved simultaneously.

On behalf of all signatories, it is requested that the Commission express its concurrence that Agreements Nos. 10,000 and 10,000–1 constitute the complete Pool Agreement before it by reopening the record in this proceeding and by affording the parties a hearing limited to the issues raised by Agreement No. 10,000–1. This agreement has been published in the FEDERAL REGISTER, and it has been the subject of a protest by the Massachusetts Port Authority.

Atlantic Container Limited, which submitted a conditional withdrawal from the Pool Agreement by its letter of April 12, 1974, will rescind that withdrawal notice upon the issuance of the Commission's Order reopening the record herein as requested.

Sincerely yours,

RICHARD W. KURRUS,
Attorney for the Signatories to the North Atlantic Pool Agreement.

Copies: All Signatories to the North Atlantic Pool Agreement.

APPENDIX C

American Export Lines, Inc., 17 Battery Place, New York, N.Y. 10004.
Atlantic Container Line, Ltd., 80 Pine St., New York, N.Y. 10005.
Dart Containerline, Inc., Northeast Plaza Bldg., 9th floor, 5 World Trade Center, New York, N.Y. 10048.
Hapag-Lloyd Aktiengesellschaft, c/o United States Navigation Co., Inc., 17 Battery Place, New York, N.Y. 10004.
Sea-Land Service, Inc., P.O. Box 1050, Corbin and Fleet Sts., Elizabeth, N.J. 07207.
Seatrain Lines, Inc., 25 Broadway, New York, N.Y. 10004.
United States Lines, Inc., 1 Broadway, New York, N.Y. 10004.

[FR Doc.74–10614 Filed 5–7–74;8:45 am]

[FMC–142]

PAN AMERICAN MAIL LINE, INC., AND NOPAL CARIBE LINES

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. 773, 75 Stat. 763 (46 U.S.C. 814)).

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1100 L Street, NW., Room 10126; or may inspect the agreement at the field offices located at New York, N.Y., New Orleans, Louisiana, San Francisco, California, and San Juan, Puerto Rico. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, on or before 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:

Gustav E. Hulander
Vice-President
Florida Motorships Corporation
1015 North America Way
Miami, Florida 33132

Agreement No. 10126, between Pan American Mail Line, Inc. and The Northern Pan America Line d/b/a Nopal Caribe Lines, common carriers by water operating Ro/Ro vessels in the trade between Florida ports and ports in Curacao, Aruba and Bonaire, Netherlands Antilles, provides for the establishment of a rate agreement whereby the parties will agree on various rates, charges,

classifications, practices, and related tariff matters, to be charged or observed by them respectively in the specified trade, but with the reservation of the right by each of them to alter for itself any rate, charge, classification, practice or related tariff matter thus agreed upon or theretofore in force upon first giving the other party at least forty-eight (48) hours' advance notice thereof.

By Order of the Federal Maritime Commission.

Dated: May 3, 1974.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.74-10612 Filed 5-7-74;8:45 am]

[FMC-142(a)]

PRUDENTIAL-GRACE LINES, INC., AND WATERMAN STEAMSHIP CORP.

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. L. A. Parish, Agent
Waterman Steamship Corporation
P.O. Box 1707
Mobile, Alabama 36601

Agreement No. 10127 would permit the two lines listed above to interchange barges and related equipment in conjunction with their LASH liner operations pursuant to the terms and conditions set forth in the agreement.

By Order of the Federal Maritime Commission.

Dated: May 3, 1974.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.74-10613 Filed 5-7-74;8:45 am]

FOREIGN-TRADE ZONES BOARD

[Docket No. 2-74]

FOREIGN-TRADE ZONE NO. 1, NEW YORK CITY

Application To Expand Area and Extend Operational Period

Notice is hereby given that the City of New York, through its Economic Development Administration, has, as zone grantee, applied to the Foreign-Trade Zones Board (the Board) for authority to expand the area of Foreign-Trade Zone No. 1, located at the Brooklyn Navy Yard, Borough of Brooklyn, New York City, and to extend the operational period for the site.

Foreign-Trade Zone No. 1 has been located within Building 77 (3rd Floor) at the Brooklyn Navy Yard since September 1972 when the Board authorized relocation of the zone there from its former Staten Island site. Considering the new site a temporary one, the City originally requested authority for three years. This application proposes the addition of some 85,000 sq. ft. of floor space to the zone on the first and second floor of Building 77, and to extend the operational period for the zone site to September 26, 1978.

As reported in the Board's annual report, during fiscal 1973 over $16 million in merchandise was handled at the zone facility which has become fully occupied. The additional space is needed to accommodate the expansion of ongoing activities as well as new firms desiring to use the facility for storing and processing foreign merchandise including liquor, automotive components, aircraft components, toiletries and tobacco products.

Most zone users are engaged in operations primarily for re-export. Those items entering domestic commerce from the zone are dutiable upon importation into U.S. Customs territory.

Copies of the City's application are available for inspection at each of the following locations:

Office of Mr. Norman Frankenheim
Property Management Services
Department of Ports & Terminals
Economic Development Administration
Room 406, Battery Maritime Building
New York, New York 10004

Office of the Executive Secretary
Foreign-Trade Zones Board
Room 6886B, U.S. Department of Commerce
14th & E Streets, N.W.
Washington, D.C. 20230

An examiners committee has been appointed to investigate the application, including the consideration of public comments. The committee consists of: (Chairman) John J. Da Ponte, Jr., Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Washington, D.C. 20230; Mr. Bart Van Lenten, Assistant Area Director for Classification and Value, New York Seaport, U.S. Customs Service, 6 World Trade Center, New York, New York 10048; and Colonel Harry W. Lombard, District Engineer, U.S. Army Engineer District New York, 26 Federal Plaza, New York, New York 10007.

Comments concerning the proposal are invited in writing (original and six copies) from interested persons and organizations. They should be addressed to the Board's Executive Secretary at the above address and postmarked on or before May 23, 1974.

Dated: May 1, 1974.

JOHN J. DA PONTE, Jr.,
Executive Secretary.

[FR Doc.74-10559 Filed 5-7-74;8:45 am]

GENERAL SERVICES ADMINISTRATION

MISUSE OF INFORMATION SUPPLIED TO THE GOVERNMENT IN CONFIDENCE

Opportunity for Comment

The Office of Management and Budget (OMB), in memoranda to Heads of Executive Departments and Agencies, dated December 7, 1972, and March 14, 1973, established and outlined plans for coordination of executive branch efforts in response to the Commission on Government Procurement (COGP) Report. Interagency task groups made up of assigned lead and participating agencies were formed to examine and recommend executive branch positions on each of the 149 COGP recommendations. Direction of executive branch efforts on COGP matters is a function which was delegated to the General Services Administration (GSA) by Executive Order 11717 on May 9, 1973.

Following is a summary of a proposal for an executive branch position on COGP Recommendation Number 13 in Part I of the Report. The proposal was drafted by a task group which was led by the National Science Foundation (NSF) working through the Executive Subcommittee of the Committee on Government Patent Policy. COGP Recommendation I-13 calls for the formulation, via legislation, of a clear-cut judicial remedy for the benefit of persons supplying information in confidence to the Government, if that information is misused by the Government. The reasons given for the need for such legislation are that lack of such a remedy may be a deterrent in the flow of innovative information to the Government, and that fairness would require a civil remedy for damages inasmuch as the criminal provisions of 18 U.S.C. 1905, according to the COGP, do not provide for compensation of an injured party.

This notice is published for the purpose of public information only and to offer an early opportunity for public comment on a proposal for an executive branch position on COGP Recommendation I–13. The proposal for an executive branch position is also being considered by appropriate agencies. Interested persons should submit their comments to the General Services Administration (AMC), Washington, DC 20405. To be given consideration, written comments must be received not later than 45 days from the date of this publication.

Publication of this notice does not imply acceptance by the executive branch of the proposed executive branch position.

COGP Recommendation I–13 reads as follows:

Establish a remedy for the misuse of information supplied to the Government in confidence.

TASK GROUP PROPOSAL FOR AN EXECUTIVE BRANCH POSITION ON COGP RECOMMENDATION I–13 (SUMMARY)

The task group recommended unanimously that COGP Recommendation I–13 not be adopted by the executive branch at this time. The group added, however, that this COGP recommendation be referred to a group to be appointed to study the implementation of other related COGP recommendations to determine and recommend the appropriate scope and nature of any remedy which may be needed in connection with the misuse of "technical data" (as opposed to "information") by the Government.

The task group proposal not to adopt COGP Recommendation I–13 at this time was formulated after a careful investigation of records on the issues which prompted the COGP recommendation. The task group found that there were no instances where a remedy was not available for cases alleging misuse of information supplied to the Government in confidence.

Specifically, the task group found the following: (1) Title 18 U.S.C. 1905, by providing a criminal penalty for unauthorized disclosure of confidential information by a Government employee, provides a deterrent to such disclosure;

(2) When data supplied in confidence under a contract is misused, a remedy can usually be found in breach of contract under 28 U.S.C. 1346 or 28 U.S.C. 1491;

(3) Owners of data also have available to them the vehicle of lodging a timely protest to prevent award of a contract to other than the data owner, if award would be based on data submitted in confidence.

In the course of its study, the task group examined also the legislative language proposed by the COGP (Section 5 of Appendix B on page 153, Volume 4 of the Report of the Commission on Government Procurement). The task group found that the COGP may have opened the door to unforseen problems in proposing legislation so broad that it would not be limited to information supplied by contractors, or prospective contractors in proposals, but could also include other information supplied to the Government such as income tax returns, business reports, etc.

Instances alleging Government misuse of technical data supplied in confidence appear to have involved no liability on the part of the Government for reasons such as: (1) Failure of the data owner to mark it so as to provide notice of its confidential nature; (2) removal of restrictive markings by persons other than Government personnel; (3) the Government had not agreed to receive the subject data in confidence; or (4) waiver of confidentiality by the owner.

The task group also found no case wherein any criminal action was brought under 18 U.S.C. 1905 for unauthorized disclosure of confidential information of the type discussed here. If misuse of such information is prevalent enough to require a civil remedy, the Task Group reasoned that at least some cases would have been brought under 18 U.S.C. 1905. The Task Group felt that this further supports the position that no immediate need has been shown for the legislation proposed by the COGP.

Responses Received from interested parties regarding this notice of opportunity for comment and official views received from executive departments and agencies in answer to a separate request therefor will be given careful consideration in the formulation of a final executive branch position.

Dated at Washington, D.C. on May 1, 1974.

R. E. ZECHMAN,
Acting Associate Administrator for Federal Management Policy.

[FR Doc.74–10519 Filed 5–7–74;8:45 am]

[Federal Property-Management Regulations Temporary Regulation F–218]

SECRETARY OF DEFENSE

Revocation of Delegations of Authority

1. *Purpose.* This regulation revokes delegations of authority to represent the Federal Government in proceedings which have been terminated.

2. *Effective date.* This regulation is effective immediately.

3. *Expiration date.* This regulation expires April 30, 1974.

4. *Revocation.* This revocation identifies those delegations which are no longer in force due to completion of the proceedings for which they were issued. Accordingly, the following FPMR temporary regulations are hereby revoked:

No.	Date	Subject
F–111	July 13, 1971	Delegation of Authority to Secretary of Defense—Regulatory Proceeding.
F–183	June 21, 1973	Do.
F–195	Oct. 24, 1973	Do.

DWIGHT A. INK,
Acting Administrator of General Services.

APRIL 30, 1974.

[FR Doc.74–10518 Filed 5–7–74;8:45 am]

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 74–30]

NASA RESEARCH AND TECHNOLOGY ADVISORY COUNCIL

Notice of Meeting

MAY 23–24, 1974.

The NASA Research and Technology Advisory Council will meet on May 23–24, 1974, in Room 625 of Federal Office Building 10B at NASA Headquarters, 600 Independence Avenue SW., Washington, D.C. 20546. The meeting will be open to the public on a first-come, first-served basis up to the seating capacity of the room, which is about 40 persons.

The NASA Research and Technology Advisory Council was established to advise NASA's senior management in the area of aeronautics and space research and technology. The Council studies issues, pinpoints critical problems, determines gaps in needed technology, points out desirable goals and objectives, summarizes the state of the art, assesses ongoing work, and makes recommendations to help NASA plan and carry out a program of greatest benefit to the nation. Dr. Ronald Smelt is Acting Chairman of the Council. There are 17 members on the Council itself and additional members on eight Committees and one Panel which report to the Council.

The following list sets forth the approved agenda and schedule for the meeting. For further information, please contact the Executive Secretary, Mr. Fred W. Bowen, Jr., Area Code 202, 755–3710.

MAY 23, 1974

Time	*Topic*
9:00 a.m.	Introduction and NASA and Council Organizational and Personnel Changes (Purpose: To inform the Council of recent personnel and organizational changes within NASA and the Council itself.)
10:00 a.m.	Status of Fiscal Year 1975 Budget (Purpose: To brief the Council on Congressional action taken to date with respect to the fiscal year 1975 Office of Aeronautics and Space Technology (OAST) budget.)
10:30 a.m.	OAST Program Status (Purpose: To brief the Council on the status of major OAST programs. The Council will use this information to guide its assessment of Committee and Panel activities as presented later in the meeting.)
1:30 p.m.	Update on NASA Energy Activities (Purpose: To bring the Council up to date on NASA's work related to energy research and development in our own aerospace programs and in cooperation with other Government agencies.)

MAY 23, 1974

Time	Topic
4:00 p.m.	Committee and Panel Reports (Purpose: Committee and Panel Chairmen will present reports on the activities of their respective groups since the last Council meeting for inclusion in the overall Council report to the NASA Administrator and Deputy Administrator.)

MAY 24, 1974

8:30 a.m.	Continuation of Committee and Panel Reports
11:00 a.m.	Preparation of Council Report (Purpose: The Council will document recommendations and observations to be submitted to the NASA Administrator and Deputy Administrator.)
12:30 p.m.	Adjournment

BOYD C. MYERS, II,
Assistant Associate Administrator for Organization and Management, National Aeronautics and Space Administration.

MAY 6, 1974.

[FR Doc.74-10749 Filed 5-7-74;9:36 am]

NATIONAL SCIENCE FOUNDATION

ADVISORY PANEL FOR ANTHROPOLOGY

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 Anthropology to be held at 9 a.m. on May 24 and 25, 1974, in Room 338 at 1800 G Street, NW., Washington, D.C. 20550.

The purpose of this panel is to provide advice and recommendations as part of the review and evaluation process for specific proposals and projects. The agenda will be devoted to the review and evaluation of research proposals.

This meeting is concerned with matters which are within the exemptions of 5 U.S.C. 552(b) and will not be open to the public in accordance with the determination by the Director of the National Science Foundation dated December 17, 1973, pursuant to the provisions of section 10(d) of P.L. 92-463.

For further information concerning this panel, contact Dr. Iwao Ishino, Program Director, Anthropology Program, Room 205, 1800 G Street, NW., Washington, D.C. 20550.

T. E. JENKINS,
Assistant Director for Administration.

APRIL 30, 1974.

[FR Doc.74-10568 Filed 5-7-74;8:45 am]

ADVISORY PANEL FOR ELECTRICAL SCIENCES AND ANALYSIS

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 Electrical Sciences and Analysis to be held at 9 a.m. on May 29, 1974, in Room 321 and at 9 a.m. on May 30, 1974, in Room 543 at 1800 G Street, NW., Washington, D.C. 20550.

The purpose of this panel is to provide advice and recommendations concerning support for research in electrical sciences and analysis. The session on May 29 will deal with energy systems. On May 30 the topic will concern energy generation, storage, transmission and utilization. The more specific agenda for this meeting follows:

MAY 29

9:00—Welcome, Panel Chairman.
9:05—Introduction, Background and Purpose, Program Director, System Theory and Applications Program.
9:15—Presentation of Opening Remarks on Research Opportunities in Energy Systems, Panel Members.
11:30—Questions and General Discussion.
12:00—Recess for lunch.
1:00—Discussions of Key Issues.
3:00—Formulation of Panel Recommendations and Summary.
5:00—Adjournment.

MAY 30

9:00—Welcome, Panel Chairman.
9:05—Introduction, Background and Purpose, Program Director, Devices and Waves Program.
9:15—Discussion of Research Opportunities in Electrical Energy Generation, Storage, Transmission and Utilization, Panel Members.
10:00—Technology Ad Hoc Subpanel Formation for Investigation of Specific Research Opportunities.
12:00—Recess for lunch.
1:00—Presentations of Subpanels.
2:30—Formulation of Panel Recommendations and Summary.
5:00—Adjournment.

This meeting shall be open to the public. Individuals who wish to attend should inform Dr. Mohammed Ghausi, Head, Electrical Sciences and Analysis Section, by telephone (202-632-5881) or by mail (Room 342, 1800 G Street, NW., Washington, D.C. 20550) prior to the meeting. Persons requiring further information concerning this panel should contact Dr. Mohammed Ghausi at the above address. Summary minutes relative to this meeting may be obtained from the Management Analysis Office, Room K-720, 1800 G Street, NW., Washington, D.C. 20550.

T. E. JENKINS,
Assistant Director for Administration.

APRIL 29, 1974.

[FR Doc. 74-10569 Filed 5-7-74;8:45 am]

ADVISORY PANEL FOR HISTORY AND PHILOSOPHY OF SCIENCE

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 History and Philosophy of Science to be held at 9 a.m. on May 17, 1974, in Room 246 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. The emergency situation prohibiting the publication of this notice within the newly prescribed 15-day lead time occurred due to difficulty in arranging a meeting date acceptable to all of the panel members.

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 Mr. Ronald Overmann, Assistant Program Director, History and Philosophy of Science Program, Room 205, 1800 G Street, NW., Washington, D.C. 20550.

T. E. JENKINS,
Assistant Director for Administration.

APRIL 30, 1974.

[FR Doc.74-10570 Filed 5-7-74;8:45 am]

OFFICE OF MANAGEMENT AND BUDGET

IMPROVING FEDERAL ENERGY RELATED ACTIVITIES

Announcement of Study

A study requested by President Nixon on ways to improve Federal energy-related regulatory activities has been submitted in preliminary form to the Director of the Office of Management and Budget, by the interagency study group assigned to perform the study.

This study deals with the organizational arrangements for carrying out energy regulation at the Federal level. It does not deal with substantive or policy issues confronting energy regulatory bodies. The report reviews the placement among the Federal agencies of responsibility for regulating the production and distribution of energy, and the consequent interrelationships among such agencies. It does not provide an examination of the internal procedures followed by these agencies.

PUBLIC COMMENT INVITED

The proposals contained in the report are those of the Study Group and not that of the Administration. The Administration position will be developed after receipt of Congressional and public comments. The plan for conducting the study, which was drawn up late last summer, provided for widespread circularization of a preliminary report as a means of obtaining the benefit of many points of view on this important and complex subject. In accordance with this plan, comments are being invited from interested members of Congress, the heads of affected Federal agencies, State and local Governments and organizations representing the energy industry, consumers, environmentalists and other interests. Comments should be received in the

Organization and Special Studies Division, Office of Management and Budget, Washington, D.C. 20503, by May 31, 1974.

Information is provided at the end of this notice as to how a copy of the report may be obtained.

SUMMARY REPORT OF FINDINGS AND RECOMMENDATIONS

The study group concluded that the most pressing need of the Federal energy regulation system at the present time is for mechanisms that coordinate diverse energy regulatory agencies and their functions. Many organizational schemes were explored in the report, but the study group concluded that consolidating the energy regulatory functions of existing Federal agencies into a "super-agency" would be counter-productive and disruptive at this time.

Among the recommendations in the study report are:

1. An independent National Energy Council, to provide comprehensive policy guidance to energy regulatory agencies through the formulation of national energy objectives.

2. A new licensing coordination office, to oversee the Federal licensing process and assure that it is functioning without undue delays or bottle-necks.

3. A new centralized energy data office within the executive branch, to augment the information capabilities of regulatory agencies by gathering and making available energy-related information that will assist them in deciding issues with broad supply, demand and price implications, and the institution of a unified information retrieval system.

4. A new Federal office and new State-level organizations, to work together and exchange information continually, coordinating Federal and State actions on individual energy facilities and overall energy objectives.

AVAILABILITY OF REPORT

Copies of the report entitled, "Federal Energy Regulation: An Organization Study" may be obtained from the Superintendent of Documents. Orders should refer to stock number S/N 5210-00386 and should be sent to the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. Make checks or money orders payable to the Superintendent of Documents in the amount of $2.80 per copy ordered.

VELMA N. BALDWIN,
Assistant to the Director for Administration.

[FR Doc.74-10513 Filed 5-7-74;8:45 am]

CLEARANCE OF REPORTS

List of Requests

The following is a list of requests for clearance of reports intended for use in collecting information from the public received by the Office of Management and Budget on May 3, 1974 (44 USC 3509). The purpose of publishing this list in the FEDERAL REGISTER is to inform the public.

The list includes the title of each request received; the name of the agency sponsoring the proposed collection of information; the agency form number, if applicable; the frequency with which the information is proposed to be collected; the name of the reviewer or reviewing division within OMB, and an indication of who will be the respondents to the proposed collection.

The symbol (x) identifies proposals which appear to raise no significant issues, and are to be approved after brief notice through this release.

Further information about the items on this Daily List may be obtained from the Clearance Office, Office of Management and Budget Washington, D.C. 20503 (202-395-4529).

NEW FORMS

DEPARTMENT OF AGRICULTURE

Forest Service:
- Rationing Wilderness Use, Form, Single time, Planchon, Visitors to two California wildernesses.
- Desolation Wilderness Trip Record, Form, Single time, Planchon, Individuals or leaders of groups traveling in desolation wilderness.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Health Resources Administration: Restudy of Rural Physicians in Twenty Rural Missouri Counties, Form HRABHRD 0426, Single time, Caywood, Rural and Metropolitan Missouri physicians.

DEPARTMENT OF THE INTERIOR

National Park Service: Family Interview—Diary Sheet; Family Information Sheet, Form, Single time, Planchon, Individuals.

Office of Water Resources Research: Open-ended Interview Questions, Form, Single time, Sheftel, Government personnel.

REVISIONS

DEPARTMENT OF THE INTERIOR

National Park Service: Volunteer Fisherman Report, Form, Occasional, Sheftel, Yellowstone visitors who engage in fishing during visit.

DEPARTMENT OF LABOR

Manpower Administration: Job Order Form, Form MA 7-45, Occasional, Sheftel, Employers using USES services.

EXTENSIONS

FEDERAL ENERGY OFFICE

Petroleum Industry Monthly Report, Form CLC 90, Monthly, Hulett (x).

No. 2 Heating Oil Price Adjustment, Form CLC 92, 92A, Monthly, Hulett (x).

Monthly Cost Allocation Report, Form FEO 96, Monthly, Hulett (x).

Report on Prices, Costs, and Profits, Form CLC 22, Occasional, Hulett (x).

PHILLIP D. LARSEN,
Budget and Management Officer.

[FR Doc.74-10651 Filed 5-7-74;8:45 am]

CLEARANCE OF REPORTS

List of Requests

The following is a list of requests for clearance of reports intended for use in collecting information from the public received by the Office of Management and Budget on May 2, 1974 (44 USC 3509). The purpose of publishing this list in the FEDERAL REGISTER is to inform the public.

The list includes the title of each request received; the name of the agency sponsoring the proposed collection of information; the agency form number, if applicable; the frequency with which the information is proposed to be collected; the name of the reviewer or reviewing division within OMB, and an indication of who will be the respondents to the proposed collection.

The symbol (x) identifies proposals which appear to raise no significant issues, and are to be approved after brief notice through this release.

Further information about the items on this Daily List may be obtained from the Clearance Office, Office of Management and Budget Washington, D.C. 20503 (202-395-4529).

NEW FORMS

AGENCY FOR INTERNATIONAL DEVELOPMENT

One-Time Letter Questionnaire, Form, Single time, Sheftel, Universities.

DEPARTMENT OF AGRICULTURE

Agricultural Research Service: Two Requests for Proposals for 1974-76 Food Consumption Surveys, Form, Single time, Sunderhauf, Individuals.

FEDERAL RESERVE BOARD

Report of Loans Sold to Institutions Related to Weekly Reporting Banks, Form FR 416c, Weekly, Hulett, Weekly reporting commercial banks.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Health Resources Administration, HRA's Methods of Disseminating Information, Form HRAOPEL 0422, Single time, Reese, Users of HRA's information.

Geocoding Systems Application to Health Data Collected for Local, State and National Purposes, Form HRANCHS 0424, Single time, Reese/Ellett, Universities.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Health Resources Administration: State Policies and Practices—Foreign Medical Graduates Licensure, Form HRABHSR0423, Single time, Caywood, Hospitals, professional associations.

REVISIONS

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Alcohol, Drug Abuse, and Mental Health Administration DAPRU Survey Form, Form, Annual, Reese, Drug abuse prevention resource units.

EXTENSIONS

DEPARTMENT OF COMMERCE

Bureau of the Census, Annual Survey-Finances of Insurance Trust Systems, Form F-13, Annual, Ellett, Government agencies.

VELMA N. BALDWIN,
Assistant to the Director for Administration.

[FR Doc.74-10652 Filed 5-7-74;8:45 am]

SECURITIES AND EXCHANGE COMMISSION

[File No. 500-1]

EQUITY FUNDING CORPORATION OF AMERICA

Notice of Suspension of Trading

MAY 1, 1974.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock, warrants to purchase the stock, 9½ percent debentures due 1990, 5½ percent convertible subordinated debentures due 1991, and all other securities of Equity Funding Corporation of America being traded otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

Therefore, pursuant to section 15(c)(5) of the Securities Exchange Act of 1934, trading in such securities otherwise than on a national securities exchange is suspended, for the period from May 2, 1974 through May 11, 1974.

By the Commission.

[SEAL] GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.74-10572 Filed 5-7-74;8:45 am]

[File No. 500-1]

INDUSTRIES INTERNATIONAL, INC.

Notice of Suspension of Trading

MAY 1, 1974.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock of Industries International, Inc. being traded otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

Therefore, pursuant to section 15(c)(5) of the Securities Exchange Act of 1934, trading in such securities otherwise than on a national securities exchange is suspended, for the period from May 2, 1974 through May 11, 1974.

By the Commission.

[SEAL] GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.74-10571 Filed 5-7-74;8:45 am]

SMALL BUSINESS ADMINISTRATION

[Notice of Disaster Loan Area 1058 Amdt. 2]

MISSISSIPPI

Amendment to Notice of Disaster Relief Loan Availability

As a result of the President's declaration of the State of Mississippi as a major disaster area following heavy rains and flooding beginning on or about April 12, 1974, applications for disaster relief loans will be accepted by the Small Business Administration from flood victims in the following additional county: Neshoba, and adjacent affected areas. (See 39 FR 15076 and Amendment 1 this issue)

Applications may be filed at the:

Small Business Administration
District Office
Petroleum Building, 6th Floor
Pascagoula and Amite Streets
Jackson, Mississippi 39205

and at such temporary offices as are established. Such addresses will be announced locally. Applications will be processed under the provisions of Pub. L. 93-24.

Applications for disaster loans under this announcement must be filed not later than June 27, 1974.

Dated: April 29, 1974.

THOMAS S. KLEPPE,
Administrator.

[FR Doc.74-10523 Filed 5-7-74;8:45 am]

[Notice of Disaster Loan Area 1058 Amdt. 1]

MISSISSIPPI

Amendment to Notice of Disaster Relief Loan Availability

As a result of the President's declaration of the State of Mississippi as a major disaster area following heavy rains and flooding beginning on or about April 12, 1974, applications for disaster relief loans will be accepted by the Small Business Administration from flood victims in the following additional Counties: Clarke, Franklin, Lauderdale, and Lincoln, and adjacent affected areas. (See 39 FR 15076)

Applications may be filed at the:

Small Business Administration
District Office
Petroleum Building, 6th Floor
Pascagoula and Amite Streets
Jackson, Mississippi 39205

and at such temporary offices as are established. Such addresses will be announced locally. Applications will be processed under the provisions of Pub. L. 93-24.

Applications for disaster loans under this announcement must be filed not later than June 21, 1974.

Dated: April 24, 1974.

THOMAS S. KLEPPE,
Administrator.

[FR Doc.74-10522 Filed 5-7-74;8:45 am]

[Declaration of Disaster Loan Area 1059]

VIRGINIA

Declaration of Disaster Loan Area

Whereas, it has been reported that during the month of April, because of the effects of a certain disaster, damage resulted to property located in the State of Virginia;

Whereas, the Small Business Administration has investigated and received reports of other investigations of conditions in the area affected;

Whereas, after reading and evaluating reports of such conditions, I find that the conditions in such area constitute a catastrophe within the purview of the Small Business Act, as amended:

Now, therefore, as Administrator of the Small Business Administration, I hereby determine that:

1. Applications for disaster loans under the provisions of section 7(b)(1) of the Small Business Act, as amended, may be received and considered by the office below indicated from persons or firms whose property situated in Smyth, Roanoke and Bath Counties and Staunton and Roanoke Cities, and adjacent affected areas, suffered damage or destruction resulting from tornadoes and high winds which occurred April 4, 1974.

Applications will be processed under the provisions of Pub. L. 93-24.

Office:
Small Business Administration
District Office
Federal Building, Rm. 3015
400 North Eighth Street
Richmond, Virginia 23240

2. Application for disaster loans under the authority of this declaration will not be accepted subsequent to June 24, 1974.

Dated: April 25, 1974.

THOMAS S. KLEPPE,
Administrator.

[FR Doc.74-105280 Filed 5-7-74;8:45 am]

[Notice of Disaster Loan Area 1060]

WISCONSIN

Notice of Disaster Relief Loan Availability

As a result of the President's declaration of the State of Wisconsin as a major disaster area following tornadoes beginning on or about April 21, 1974, applications for disaster relief loans will be accepted by the Small Business Administration from victims in the following Counties: Dodge, Fond du Lac, Sheboygan and Winnebago and adjacent affected areas.

Applications may be filed at the:

Small Business Administration
District Office
122 West Washington Avenue, Rm. 713
Madison, Wisconsin 53703

and at such temporary offices as are established. Such addresses will be announced locally. Applications will be processed under the provisions of Public Law 93-24.

Applications for disaster loans under this announcement must be filed not later than June 28, 1974.

Dated: April 29, 1974.

THOMAS S. KLEPPE,
Administrator.

[FR Doc.74-10521 Filed 5-7-74;8:45 am]

TARIFF COMMISSION

[332-70]

CONVERSION OF THE TARIFF SCHEDULES OF THE UNITED STATES INTO FORMAT OF THE BRUSSELS TARIFF NOMENCLATURE

Notice of Hearings on Draft

The U.S. Tariff Commission hereby gives notice that a preliminary draft of the following chapters of the Tariff

Schedules of the United States (TSUS) converted to the format of the Brussels Tariff Nomenclature (BTN):

87 Vehicles, other than railway or tramway rolling-stock, and parts thereof.

is being released today and that a public hearing thereon will begin at 10 a.m., e.d.t., June 3, 1974, in room 859, Federal Building and U.S. Court House, 231 W. Lafayette St., Detroit, Michigan. The purpose of this hearing is to obtain the comments and views of interested parties on the preliminary draft conversion.

Requests to appear at the hearings on this chapter must be filed in writing with the Secretary of the Commission not later than May 24, 1974. Parties who have properly entered an appearance by this date will be individually notified of the date on which they are scheduled to appear. Such notice will be sent as soon as possible after May 24, 1974. Any person who fails to receive such notification by May 30, 1974, should immediately communicate with the Office of the Secretary of the Commission.

In its public notice issued March 8, 1974, regarding hearings on other chapters of the draft converted schedules (39 FR 9719 of March 13, 1974) interested parties were notified regarding the rules governing the conduct of the hearings, and the submission of written statements. The Commission's notice of March 8, 1974, applies to the hearing on the chapter being released today to the extent that it is applicable.

As each of the chapters is completed and released, copies thereof are made available for public inspection at the offices of the Commission in Washington, D.C., and New York, New York; at all field offices in the Department of Commerce. The locations of these offices are listed in the notice of March 8, 1974.

Issued: May 3, 1974.

By order of the Commission.

[SEAL] KENNETH R. MASON, *Secretary.*

[FR Doc.74-10611 Filed 5-7-74;8:45 am]

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PART II



DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Public Health Service

■

HEALTH MAINTENANCE ORGANIZATIONS

Proposed Rulemaking

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Public Health Service

[42 CFR Part 110]

HEALTH MAINTENANCE ORGANIZATIONS

Proposed Rulemaking

Notice is hereby given that the Assistant Secretary for Health of the Department of Health, Education, and Welfare, with the approval of the Secretary of Health, Education, and Welfare, proposes to establish a new subchapter J of Title 42, Code of Federal Regulations, entitled "Health Care Delivery Systems", and to issue within such subchapter a new Part 110, entitled "Health Maintenance Organizations".

The purpose of the proposed Part 110 is to implement the provisions of The Health Maintenance Organization Act of 1973, Public Law 93–222, 42 U.S.C. 300e et seq. Section 2 of this Act adds a new Title XIII to the Public Health Service Act. This set of proposed regulations is designed to permit the Secretary to provide financial assistance to entities eligible for such assistance under sections 1303, 1304, and 1305 of the Public Health Service Act. Included are subparts setting forth the requirements for a health maintenance organization, general provisions regarding Federal financial assistance, specific provisions relating to assistance for feasibility surveys, planning and initial development projects, and operating costs. Also included is a subpart dealing with the effect of certain restrictive State laws and practices which prevent an entity from doing business as a health maintenance organization.

It is expected that a second Notice of Proposed Rulemaking will be published soon. This latter publication will include regulations implementing sections 1310 ("Employees' health benefits plans") and 1312 ("Continued regulation of health maintenance organizations") of the Public Health Service Act. Section 1310 imposes on certain employers the requirement that they include in any health benefits plan offered to their employees the option of membership in qualified health maintenance organizations. Section 1312 deals with the continued regulation by the Secretary of health maintenance organizations.

The proposed regulations appended below are summarized as follows:

Subpart A. This subpart is based on the statutory definition of a health maintenance organization, found in section 1301 of the Public Health Service Act. Section 1301(b) describes the manner in which basic and supplemental health services must be provided to members, while section 1301(c) imposes certain requirements with respect to the organization and operation of the health maintenance organization. These proposed regulations also include the definitions of section 1302. With respect to determinations of priorities in funding, guidelines will explain the manner in which the criteria for identification of medically underserved areas will be employed.

Subpart B. This subpart contains the general provisions and requirements with respect to the Federal financial assistance authorized by the Health Maintenance Organization Act of 1973.

Subpart C. This subpart describes the assistance authorized by section 1303, for feasibility surveys, and describes the application requirements and project elements for such assistance.

Subpart D. Subpart D describes the assistance authorized by section 1304, for projects for planning and initial development of health maintenance organizations. It sets forth application requirements and project elements for such assistance.

Subpart E. This subpart is based on section 1305, which authorizes the Secretary to make loans and loan guarantees to assist health maintenance organizations in meeting certain operating costs during their first thirty-six months of operation or such costs during the first thirty-six months following their expansion.

Subpart G. Subpart G is based on section 1311 of the Public Health Service Act, "Restrictive State Laws and Practices".

Interested persons are invited to submit written comments, suggestions, or objections regarding the proposed new 42 CFR Part 110 to the Director, Bureau of Community Health Services, Parklawn Building, 5600 Fishers Lane, Rockville, Md. 20852, on or before June 7, 1974. Comments will be available for public inspection at Room 13–07, Parklawn Building, between the hours of 8:30 a.m. and 5:00 p.m. Monday through Friday.

It is therefore proposed to establish a new Subchapter J for Title 42, Code of Federal Regulations, and to issue within it a new Part 110, as set forth below.

Dated: May 2, 1974.

CHARLES C. EDWARDS,
Assistant Secretary of Health.

Approved: May 2, 1974.

CASPAR W. WEINBERGER,
Secretary.

PART 110—HEALTH MAINTENANCE ORGANIZATIONS

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[Reserved]

AUTHORITY: Sec. 215, 58 Stat. 690, 42 U.S.C. 216; secs. 1301–1315, 87 Stat. 914–933 (42 U.S.C. 300e–300e–14).

Subpart A—Requirements for a Health Maintenance Organization

§ 110.101 Definitions.

As used in this Part 110:

(a) "Health maintenance organization" means a legal entity which provides basic and supplemental health services to its members in the manner prescribed, is organized and operated in the manner prescribed, and otherwise meets the requirements of section 1301 of the Act and the regulations under this subpart.

(b) "Basic health services" means:

(1) Physicians services (including consultant and referral services by a physician);

(2) Inpatient and outpatient hospital services;

(3) Medically necessary emergency health services;

(4) Short-term (not to exceed twenty visits), outpatient evaluative and crisis intervention mental health services;

(5) Medical treatment and referral services (including referral services to appropriate ancillary services) for the abuse of or addiction to alcohol and drugs;

(6) Diagnostic laboratory and diagnostic and therapeutic radiologic services;

(7) Home health services; and

(8) Preventive health services (including voluntary family planning services, infertility services, preventive dental care for children, and children's eye examinations conducted to determine the need for vision correction).

(c) "Supplemental health services" means:

(1) Services of facilities for intermediate and long-term care;

(2) Vision care not included as a basic health service;

(3) Dental services not included as a basic health service;

(4) Mental health services not included as a basic health service;

(5) Long-term physical medicine and rehabilitative services (including physical therapy); and

(6) The provision of prescription drugs prescribed in the delivery of a basic health service or a supplemental health service provided by the health maintenance organization.

(d) "Member" means an individual who has entered into a contractual arrangement, or on whose behalf a contractual arrangement has been entered into, with the organization under which the organization assumes the responsibility for the provision to such individual of basic health services and of such supplemental health services as may be contracted for.

(e) "Medical group" means a partnership, association, or other group—

(1) Which is composed of health professionals licensed to practice medicine or osteopathy and of such other licensed health professionals (including dentists, optometrists, and podiatrists) as are necessary for the provision of health services for which the group is responsible;

(2) A majority of the members of which are licensed to practice medicine or osteopathy; and

(3) The members of which

(i) As their principal (over 50 percent) professional activity and as a group responsibility engage in the coordinated practice of their profession for a health maintenance organization or which group presents a time phased plan, not to exceed three years, to meet this requirement to which they are committed which is acceptable to the Secretary;

(ii) Pool their income from practice as members of the group and distribute it among themselves according to a prearranged salary or drawing account or other plan;

(iii) Share medical and other records and substantial portions of major equipment and of professional, technical, and administrative staff;

(iv) Utilize such additional professional personnel, allied health professions personnel, and other health personnel as are available and appropriate for the effective and efficient delivery of the services of the members of the group; and

(v) Arrange for and encourage continuing education in the field of clinical medicine and related areas for the members of the group.

(f) "Individual practice association" means a partnership, corporation, association, or other legal entity which has as its primary objective the delivery or arrangements for the delivery of health services and which has entered into a written services arrangement or arrangements with persons who are licensed to practice medicine, osteopathy, dentistry, podiatry, optometry, or other health profession in a State and a majority of whom are licensed to practice medicine or osteopathy. Such written services arrangement shall provide:

(1) That such persons shall provide their professional services in accordance with a compensation arrangement established by the entity; and

(2) To the extent feasible

(i) That such persons shall utilize such additional professional personnel, allied health professions personnel, and other health personnel as are available and appropriate for the effective and efficient delivery of the services of the persons who are parties to the arrangement;

(ii) For the sharing by such persons of medical and other records, equipment, and professional, technical, and administrative staff; and

(iii) For the arrangement and encouragement of the continuing education of such persons in the field of clinical medicine and related areas.

(g) "Medically underserved population" means the population of an urban or rural area designated by the Secretary as an area with a shortage of personal health services. The Secretary shall make such a designation only after consideration of the following factors with respect to such urban or rural area:

(1) Percentage of the population with family incomes below the poverty level, according to the latest U.S. Census data, for both (A) the identified area and (B) the total proposed health maintenance organization service area;

(2) Percentage of the population which is age 65 or over, according to the latest U.S. Census data, for both (A) the identified area and (B) the total proposed health maintenance organization service area;

(3) Infant mortality rate according to local vital statistics data for both (A) the identified area and (B) the total proposed health maintenance organization service area, to the best available approximation; and

(4) Number of primary care physicians (doctors of medicine and doctors of osteopathy) in general or family practice, internal medicine, pediatrics, obstetrics and gynecology, or general surgery, in relation to the population of the total proposed health maintenance organization service area.

(h) "Community rating system" means a system of fixing rates of payments for health services. Under such a system rates of payments may be determined on a per-person or per-family basis and may vary with the number of persons in a family, but except as otherwise authorized in the next sentence, such rates must be equivalent for all individuals and for all families of similar composition. Only the following differentials in rates of payments may be established under such system:

(1) Nominal differentials in such rates may be established to reflect the different administrative costs of collecting payments from the following categories of members:

(i) Individual members (including their families),

(ii) Small groups of members (100 members or less),

(iii) Large groups of members (over 100 members), upon demonstration to the Secretary that such differentials are based upon actual costs of collecting payments or upon projected costs which the Secretary finds to be reasonably sound estimates.

(2) Differentials in such rates may be established for members enrolled in a health maintenance organization pursuant to a contract with a governmental authority under section 1079 ("Contracts for Medical Care for Spouses and Children: Plans") or section 1086 ("Contracts for Health Benefits for Certain Members, Former Members and their Dependents") of Title 10 ("Armed Forces"), United States Code, or under any other governmental program (other than the health benefits program authorized by chapter 89 ("Health Insurance"), of Title 5 ("Government Organization and Employees"), United States Code), or under any health benefits program for employees of States, political subdivisions of States, and other public entities. Any differentials established under this subparagraph must be approved by the Secretary.

(3) A health maintenance organization may establish a separate community rate for separate regional components of the organization upon satisfactory demonstration to the Secretary of the following:

(i) Each such regional component is geographically distinct and separate from any other regional component;

(ii) Membership is established with respect to the individual regional component, rather than with respect to the parent health maintenance organization; and

(iii) Each such regional component provides substantially the full range of basic health services to its members, without extensive referral between components of the organization for such services, and without substantial utilization by any two such components of the same health care facilities. The separate community rate for each such regional component of the health maintenance organization must be based on the different costs of providing health services in such regions. Such differentials must be approved by the Secretary.

(i) "Nonmetropolitan area" means an area no part of which is within an area designated as a standard metropolitan statistical area by the Office of Management and Budget and which does not contain a city whose population exceeds fifty thousand individuals.

(j) "Rural area" means any area not listed as a place having a population of 2,500 or more in Document #PC(1)-A, "Number of Inhabitants", Table VI, "Population of Places", and not listed as an urbanized area in Table XI, "Popula-

tion of Urbanized Areas" of the same document (1970 Census, Bureau of the Census, U.S. Department of Commerce).

(k) "Non-Federal lender" means any lender other than an agency or instrumentality of the United States.

(l) "Act" means the Public Health Service Act.

(m) "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 has been delegated.

§ 110.102 Delivery of health services.

A health maintenance organization shall:

(a) Provide basic and supplemental health services to its members without limitation as to time or cost other than prescribed in the Act and these regulations; and

(b) Meet the requirements set forth in these regulations: *Provided*, that an entity which otherwise may be considered a health maintenance organization under these regulations may be considered a health maintenance organization if, with respect to its members who are entitled to benefits under Title XVIII or Title XIX of the Social Security Act, (1) it does not furnish health services for which it may not be compensated under Title XVIII or XIX, and (2) it does not fix payments under a community rating system, and (3) it does not assume full financial risk on a prospective basis for the provision to such members of basic and supplemental health services with respect to which it is not required to assume under the Medicare program or a Medicaid contract such financial risk.

§ 110.103 Payment for basic health services.

Each health maintenance organization shall provide each member basic health services for a basic health services payment which—

(a) Is to be paid on a periodic basis without regard to the dates such health services are provided;

(b) Is fixed without regard to the frequency, extent, or kind of such health services actually furnished;

(c) Is fixed under a community rating system; and

(d) May be supplemented by additional nominal copayments which may be required for the provision of specific basic health services. Each health maintenance organization may establish one or more copayment options, calculated on the basis of a single community rated premium. Every copayment option so established shall be offered to each member, whenever enrolled individually or in the case of a voluntary association to that association: *Provided*, That (1) the copayments charged by the health maintenance organization shall not exceed 50 percent of the total cost of providing any single service to its members, nor in the aggregate more than 20 percent of the total cost of providing all basic health services, (2) no copayment may be imposed on any individual or family in any calendar year, when the copayments made by such individual or family in such calendar year total 50 percent of the total annual premium cost which such individual or family would be required to pay if he or it were enrolled under an option with no copayments, and (3) in no event shall copayments be required where or in such a manner that they serve as a barrier to the utilization of health services or membership in the organization.

§ 110.104 Payment for supplemental health services.

(a) A health maintenance organization may require supplemental health services payments, in addition to the basic health services payments, for the provision of each health service included in the supplemental health services set forth in § 110.109, for which the required health manpower are locally available, and for which members have contracted.

(b) Supplemental health services payments may be made in any agreed upon manner, such as prepayment, or fee-for-service. Supplemental health services payments which are fixed on a prepayment basis, however, shall be fixed under a community rating system.

(c) Each health maintenance organization shall adopt a policy to collect payment for services rendered from third parties legally liable to pay therefor.

§ 110.105 Providers of services.

(a) Basic health services shall be provided through health professionals who are members of the staff of the health maintenance organization or through medical groups or individual practice associations, unless

(1) The services are unusual or infrequently used; or

(2) It was medically necessary, and not for reasons of convenience, that the service be provided to a member before he could have it provided by such a health professional.

(b) For purposes of paragraph (a)(1) of this section, unusual or infrequently used basic health services are those services which do not warrant provision through staff of the health maintenance organization, a medical group, and/or an individual practice association as demonstrated by the health maintenance organization to the satisfaction of the Secretary. The provision of such services not provided through the staff of a health maintenance organization or through a medical group or an individual practice association shall be arranged for by the health maintenance organization with other providers in the area. If a health maintenance organization arranges for the provision of basic health services through medical groups or individual practice associations, such arrangements shall be in the form of a written services arrangement which shall include provisions which impose on such groups or associations effective incentives such as risk-sharing and profit-sharing, designed to avoid unnecessary or unduly costly utilization of health services.

(c) Health professionals, for the purposes of the previous paragraph, means physicians, dentists, nurses, podiatrists, optometrists, and other professionals engaged in the delivery of health services who are licensed, practice under an institutional license, are certified, or practice under authority of the health maintenance organization, a medical group, individual practice association, or other authority consistent with State law.

(d) Each health maintenance organization shall provide or arrange for the provision of basic health services, or reimburse its members for the payment of such services in cases of medical necessity when such services are obtained either in-area or out-of-area from other providers when enrollees are unable to obtain such services either from the health maintenance organization in which they are enrolled, or from other providers through arrangements made by the health maintenance organzation. Each health maintenance organization shall adopt procedures to review promptly all claims for reimbursement for the provision of basic health services, which procedures shall include the designation of a physician to determine the medical necessity for obtaining such services.

§ 110.106 Availability, accessibility and continuity of basic and supplemental health services.

Within the area served by the health maintenance organization, basic health services and the supplemental health services for which members have contracted shall:

(a) Be available and accessible to each of its members promptly, with respect to:

(1) Its geographic location, hours of operation, and provisions for after-hours services; and

(2) Staffing patterns within generally accepted norms for meeting the projected membership needs;

(b) Be provided in a manner which assures continuity, which will include, but not be limited to:

(1) Provision of a physician who is primarily responsible for providing for and overseeing the member's overall health care needs;

(2) Development of a medical record-keeping system through which all pertinent information relating to the medical management of the patient is accumulated and is readily available to appropriate professionals; and

(3) When medically necessary, be available and accessible 24 hours a day and 7 days a week.

§ 110.107 Organization and operation.

Each health maintenance organization shall—

(a) Have a fiscally sound operation, which will include adequate provision against the risk of insolvency;

(b) Assure continuation of benefits for the duration of the contract period for which payment continues to be made, including provisions for payments to unaffiliated providers for services rendered, and assume full financial risk on a pros-

pective basis for the provision of basic health services, except that a health maintenance organization may obtain insurance or make other arrangements:

(1) For the cost of providing to any member basic health services the aggregate value of which exceeds $5,000 in any year;

(2) For the cost of basic health services provided to its members other than through the organization because medical necessity required their provision before they could be secured through the organization; and

(3) For not more than 90 percent of the amount by which its costs for any of its fiscal years exceed 115 percent of its income for such fiscal year;

(c) After full and fair disclosure of benefits, coverage, rates, location, and hours of service, enroll persons who are broadly representative of the various age, social, and income groups within the area it serves except that in the case of a health maintenance organization which has a medically underserved population located (in whole or in part) in the area it serves, not more than 75 percent of the members of that organization may be enrolled from the medically underserved population unless the area in which such population resides is also a rural area: *Provided*, That in no event shall more than 50 percent of the enrolled population be composed of individuals receiving medical benefits under either Titles XVIII or XIX of the Social Security Act unless for good cause shown the Secretary waives such requirement.

(d) Have an open enrollment period of not less than thirty days at least once during each consecutive twelve-month period during which enrollment period it accepts, up to its capacity, individuals in the order in which they apply for enrollment and without regard to their health status or their requirements for health services, except that if the organization demonstrates to the satisfaction of the Secretary that—

(1) It has enrolled, or would be compelled to enroll, a disproportionate number of individuals who would be likely to utilize its services more often than an actuarially determined average of the utilization of services by current enrollees and that enrollment during an open enrollment period of an additional number of such individuals would jeopardize its economic viability, or

(2) If it maintained an open enrollment period it would not be able to comply with the requirements of paragraph (c) of this section, or

(3) It would be compelled to enroll a number of individuals which would exceed its capacity, based upon a reasonable projection of new enrollments under existing group contracts, the Secretary, at the request of the organization, may waive compliance with the open enrollment requirement of this paragraph for not more than twelve months: *Provided*, That the Secretary may provide additional such waivers to that organization if the organization submits a separate, satisfactory request and justification for each such waiver;

(e) In order to obtain a waiver of the annual open enrollment period required in paragraph (d) of this section,

(1) Submit a plan to (i) compute on a prospective basis an actuarially determined average of the utilization of services by current and/or potential enrollees, and (ii) collect data from potential entrollees and project patterns of utilization and costs in order to determine if open enrollment would jeopardize the economic viability of the organization;

(2) Indicate, upon the basis of reasonable estimates, that an open enrollment period would result in enrolling more than 50 percent Title XVIII and Title XIX beneficiaries, in violation of paragraph (c) of this section or

(3) Indicate, upon the basis of reasonable estimates, that an open enrollment period would result in the enrollment of more members than could be served within the capacity of the organization, considering the new enrollment anticipated under existing group contracts; and

(4) Provide an assurance that an waiwaiver granted on the basis of the occurrence of certain conditions will not be utilized unless and until such conditions actually occur;

(f) Not expel or refuse to re-enroll any member because of his health status or his requirements for health services;

(g) Be organized in such a manner that assures that:

(1) No later than six months after the health maintenance organization becomes operational, at least one-third of the membership of the Board of Directors or other policy-making body of the health maintenance organization will be members of the organization: *Provided*, That no member having ownership or interest in or employed by or gaining financial rewards from his dealings with the health maintenance organization, or with a plan-affiliated institution or organization, and no members of his immediate family shall be included in the minimum one-third member representation on the Board or policy-making body; except none of the foregoing shall prohibit the payment of directors' fees or other similar fees to persons serving on such Board or body; and

(2) There will be equitable representation on such Board of Directors or other policy - making body of members from medically underserved populations served by the organization, but in no instance, if such population is to be served, will such population be without representation on the policy-making body;

(h) Be organized in such a manner that provides meaningful procedures for hearing and resolving grievances between the health maintenance organization (including the medical group or groups and other health delivery entities providing health services for the organization) and the members of the organization, which procedures will assure that grievances and complaints of the members will be transmitted in a timely manner to a decision-making level within the organization which has authority to take corrective action;

(i) Have organizational arrangements, consistent with program emphasis on quality health care, for an ongoing quality assurance program for its health services which program

(1) Stresses health outcomes;

(2) Provides review by physicians and other health professionals of the process followed in the provision of health services;

(3) Provides systematic data collection of performance and patient results, provides interpretation of such data to the practitioners, and institutes needed change; and

(4) Is designed in such a manner as is likely to meet the standards imposed on hospitals and other operating health care facilities or organizations pursuant to section 1155(e) of the Social Security Act;

(j) Provide assurance that the basic and supplemental health services provided by the organization or through arrangements with other providers will meet the requirements contained in the conditions of participation in subparts J, K, L, M, N, and Q of 20 CFR Part 405;

(k) Provide, or make arrangements for, continuing education for its health professional staff;

(l) Provide an effective procedure while safeguarding the confidentiality of the doctor-patient relationship, to develop, compile, evaluate, and report, at such times and in such manner as the Secretary may require, to the Secretary, to its members, and to the general public, statistics and other information relating to;

(1) The cost of its operations;

(2) The patterns of utilization of its services, including the effects on such utilization of its requirements, if any, for nominal copayments;

(3) The availability, accessibility, and acceptability of its services;

(4) To the extent practical, developments in the health status of its members; and

(5) Such other matters as the Secretary may require; and

(m) Be organized and operated in a manner intended to preserve human dignity.

§ 110.103 Health benefits plan: basic health services.

(a) Each health maintenance organization shall have the capacity and the capability to deliver or arrange for the delivery of the basic health services, as follows:

(1) Physician services (including consultant and referral services by a physician). Physician services shall be provided by a licensed physician, or if a service of a physician may also be provided under applicable State law by a dentist, osteopath, optometrist, or podiatrist, or other licensed health professionals, a health maintenance organization may provide physician services through such health professionals licensed to provide such services.

(2) Inpatient and outpatient hospital services. Outpatient hospital services shall include diagnostic and/or treatment services for patients who are am-

bulatory and may be provided at a hospital or in a nonhospital-based health care facility. Outpatient and inpatient hospital services shall include rehabilitation services appropriate to short-term hospital care.

(3) Medically necessary emergency health services. Provisions for covering in-area and out-of-area medically necessary emergency health services are required or members must be reimbursed for payment of such services in accordance with § 110.105(d).

(i) In-area medically necessary emergency health services shall be:

(A) Available 24 hours a day, seven days a week;

(B) Provided through the facilities of and by the health professionals of the health maintenance organization or in special circumstances through arrangements with other providers;

(C) Provided by a physician and other licensed or ancillary personnel, readily available at all times; and

(D) Explained by the health maintenance organization to its members, including instructions on the procedures to be followed to secure such services.

(ii) Members requiring such services but who for reasons of medical necessity are unable to obtain them directly from the health maintenance organization in which they are enrolled or from providers or other persons with whom the health maintenance organization has arrangements for the provision of such services shall be reimbursed for such services by the organization.

(4) Short-term (not to exceed 20 visits per calendar year), outpatient evaluative and crisis intervention mental health services. (i) Short-term outpatient evaluative mental health services shall be available and accessible to health maintenance organization members during the normal hours of services.

(ii) Crisis intervention services shall be accessible in the same manner as are other medically necessary emergency services.

(iii) Mental health services shall be provided by or under the direction of qualified mental health professionals, and where feasible should be provided through community mental health centers.

(5) Medical treatment and referral services (including referral services to appropriate ancillary services) for the abuse of or addiction to alcohol and drugs. The diagnosis and medical treatment of alcohol and drug abuse and addiction shall be provided to health maintenance organization members. Screening, referral, and followup of patients with alcohol or drug problems to appropriate ancillary resources also shall be provided.

(6) Diagnostic laboratory and diagnostic and therapeutic radiologic services. Diagnostic laboratory and diagnostic and therapeutic radiology services shall be provided or arranged for in support of basic health services.

(7) Home health services. Home health services means health services provided at a member's home by health care personnel, as prescribed or directed by the responsible physician or other authority designated by the health maintenance organization. Where feasible, such services should be provided under the auspices of local home health agencies.

(8) Preventive health services (including voluntary family planning services, infertility services, preventive dental care for children, and children's eye examinations conducted to determine the need for vision correction). Preventive health services shall be made available to members and shall include at least the following:

(i) A broad range of voluntary family planning services.

(ii) Infertility services.

(iii) Preventive dental care to protect and maintain the dental health of children through age 11 provided by a licensed dentist or other qualified personnel. Preventive dental care shall include:

(A) Oral prophylaxis, as necessary, and

(B) Topical application of fluorides and/or the prescription of fluorides for systematic use when not available in the community water supply.

(iv) Eye examinations for children through age 11, as medically indicated and in accord with acceptable medical practice, to determine the need for vision correction, and

(v) Pediatric and adult immunizations, in accord with accepted medical practice.

(9) Medical social services.

(10) Health education services and education in the appropriate use of health services and in the contribution each member can make to the maintenance of his own health. A health maintenance organization shall provide its members with (i) instruction in personal health care measures, and (ii) information about its services including recommendations on generally accepted medical standards for use and frequency of such services.

(b) The following are not required to be provided as basic health services:

(1) Corrective appliances and artificial aids;

(2) Treatment of psychiatric conditions, except as required under section 1302(1)(D) of the Act;

(3) Cosmetic surgery, unless medically necessary;

(4) Provision of prescribed drugs and medicines;

(5) Ambulance transportation, unless medically necessary;

(6) Treatment for chronic alcoholism and drug addiction, except as required by section 1302(1)(E) of the Act and paragraph (a)(5) of this section;

(7) Care for military service connected disabilities for which the member is legally entitled to services and for which facilities are reasonably available to this member;

(8) Dental care and dental x-ray, except as required by section 1302(1)(H) of the Act;

(9) Vision care, except as required by section 1302(1)(H) of the Act;

(10) Conditions that State law requires be treated in a public facility; and

(11) Inpatient benefits for the specific spell of illness for which a member is hospitalized on the effective date of his coverage, and for which the member is covered under any form of service or insurance arrangement.

§ 110.109 Health benefits plan: supplemental health services.

(a) Provided that the required health manpower is available, each health maintenance organization shall provide at least the following supplemental health services to members who have contracted therefor:

(1) Services of facilities for intermediate and long-term care;

(2) Vision care not included as a basic health service;

(3) Dental services not included as a basic health service;

(4) Mental health services not provided as a basic health service;

(5) Long-term physical medicine and rehabilitative services (including physical therapy); and

(6) Prescription drugs prescribed in the course of provision of basic or supplemental health services.

(b) A health maintenance organization is authorized, in connection with the prescription or provision of prescription drugs, to maintain, review, and evaluate a drug use profile of its members receiving such services, evaluate patterns of drug utilization to assure optimum drug therapy, and provide for instruction of its members and of health professionals in the use of prescription and nonprescription drugs. Each health maintenance organization providing such services shall insure that:

(1) The program is developed jointly by the physicians and pharmacists associated with the health maintenance organization;

(2) The objectives of the program are described and understood by all physicians, pharmacists, and members of the health maintenance organization;

(3) Individual rights are protected and that all information regarding and identifying an individual is available only to appropriate health professionals of the health maintenance organization;

(4) The primary thrust of the program is optimum drug therapy for the individual member of the health maintenance organization; and

(5) The information obtained in drug utilization review is utilized in educational programs for professionals and members of the health maintenance organization.

Subpart B—Federal Financial Assistance: General

§ 110.201 Applicability.

The regulations of this subpart apply to the award of grants, contracts, loans, and loan guarantees to public or nonprofit private entities or private entities (other than nonprofit private entities) for projects as authorized by sections 1303, 1304, and 1305 of the Act.

§ 110.202 Definitions.

(a) "Nonprofit" as applied to private entity, agency, institution or organization means a private entity, agency, institution, or organization, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

(b) "Section 314(a) State health planning agency" (314(a) agency) means the agency of a State which administers or supervises the administration of a State's health planning functions under a State plan approved under section 314(a) of the Act; and the term "section 314(b) areawide health planning agency" (314(b) agency) means a public or nonprofit private agency or organization which has developed a comprehensive regional, metropolitan, or other local area plan or plans referred to in section 314(b) of the Act.

(c) "Significant expansion" means (1) an increase over current membership of not less than 25 percent which will be achieved at a rate that will at least double the average annual rate of enrollment growth during the preceding two years; or (2) expansion of the service area if the Secretary determines that the provision of Federal financial assistance will accelerate the existing rate of service area growth.

§ 110.203 Application requirements.

(a) An application for a grant, contract, loan or loan guarantee shall be submitted to the Secretary at such time and in such form and manner as the Secretary may prescribe.

(b) The application shall contain a budget and a narrative describing the manner in which the applicant intends to conduct the project and carry out the requirements of these regulations. The application must describe the project in sufficient detail to identify clearly the nature, need, specific objectives, plan and methods of the project.

(c) The application must be executed by an individual authorized to act for the applicant and to assume in behalf of the applicant the obligations imposed by the statute, the regulations of this subpart, and any additional conditions of the award.

(d) The applicant shall submit with the application:

(1) A full financial statement; and

(2) Written verification from at least two public or two private lending agencies or institutions demonstrating that, after a formal request,

(i) Funds have been denied in the amount requested in the application, or

(ii) Funds in the amount requested in the application are available only at an interest rate in excess of those currently in effect for the loan and loan guarantee program on the date of the application.

On the basis of the information submitted, the Secretary will determine whether the applicant would not be able to complete the project or undertaking for which the application is submitted without the assistance applied for.

(e) Each application must contain or be supported by assurances satisfactory to the Secretary that the applicant will, when operational as a health maintenance organization, enroll and maintain the maximum number of members that it can effectively serve with the available and potential resources of the health maintenance organization.

(f) Each application which evidences or projects an enrollment of at least 66 percent from a nonmetropolitan area shall identify the area in which such population resides and indicate the percent of anticipated enrollment to be drawn from such area.

(g) Each application which evidences or projects an enrollment of at least 30 percent from a medically underserved population when the health maintenance organization first receives financial assistance or becomes operational shall identify the area in which such population resides and the total population of that area, and provide the information described in § 110.101(g).

(h) Each application must verify that each 314(b) agency whose section 314(b) plan covers (in whole or in part) the area to be served by the health maintenance organization for which such application is submitted (or if there is no such agency, the 314(a) agency whose section 314(a) plan covers (in whole or in part) such area) has been given at least 40 days during which to review and comment on the application. The applicant shall request that the comments of such agencies be forwarded to the Secretary through the appropriate Department of Health, Education, and Welfare Regional Office by the time the application is to be submitted to the Secretary.

(i) If under applicable State law, the application may not be submitted without the approval of the 314(b) or the 314(a) agency, the applicant shall obtain such approval which must be included as a part of the application.

(j) The application shall provide written information describing the organization's development and operation of any prior projects which were supported by funds or by loans or loan guarantees under Title XIII of the Act.

(k) Applicants for more than one grant, contract, loan, or loan guarantee under Title XIII of the Act, simultaneously or over the course of time, shall not be required to duplicate information, but shall update such information with each subsequent application.

§ 110.204 314(b) or 314(a) agency review and comments.

The appropriate 314(b) or 314(a) agency shall have an opportunity to evaluate each application for support under Title XIII of the Act submitted from its planning area in relation to such plans as the health planning agency may have developed and its current knowledge of the health planning area. The 314 agency should provide to the Secretary through the appropriate Department of Health, Education, and Welfare Regional Office comments and recommendations on approval, including the general bases for comments pertinent to inadequacies in the applications, with regard to the following:

(a) Compatibility of the proposed project with the areawide or State plan for health services;

(b) Accuracy and thoroughness of description of the medical services area in which the applicant proposes to develop, operate, or expand a health maintenance organization;

(c) Accuracy and thoroughness with which applicant has identified the population groups to be served by the proposed health maintenance organization as required by § 110.203(f) and § 110.203(g);

(d) Anticipated impact of the proposed project on the general accessibility and availability of care in the area, including:

(1) Whether proposed project meets the needs of the community for health services in proposed service area;

(2) Effects of offering an alternative form of health services to individuals or groups; and

(3) Identification and adequate description of existing barriers to the effective delivery of health services, including geographic, economic, cultural and language barriers;

(e) Economic impact, including:

(1) Effects on existing health resources or facilities;

(2) Potential of proposed project to draw new health resources into the area; and

(3) Adequacy of the population of the area as a base for the anticipated enrollment.

(f) Agency cooperation, including:

(1) Adequate plans by applicant for working cooperatively with the appropriate 314(b) and 314(a) agencies; and

(2) The experience of applicant, if any, in dealing with other segments of the health care community.

(g) Whether arrangements for services appear realistic, achievable and appropriate, including, but not limited to:

(1) Potential for proposed project to be adequately staffed to accommodate enrolled members or anticipated membership;

(2) Potential for adequate provision of the services considering availability of manpower and equipment, and success of previous attempts to recruit personnel;

(3) Availability of health professionals in the area, and adequate evidence of cooperative planning with these providers (include summaries of verbal contacts or copies of correspondence); and

(4) Reliability of evidence of support for and acceptance of the proposed project by the community.

§ 110.205 Records, reports, inspection, and audit.

Each grant is subject to the following conditions:

(a) Each grant, contract, loan, or loan guarantee awarded pursuant to this Part 110 shall be subject to the condition that the recipient shall maintain records which disclose the amount and disposition of the proceeds of the grant, contract, or loan (directly made or guaranteed), the total cost of the undertak-

ing in connection with which such assistance was given or used, the amount of that portion of the cost of the undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(b) The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit, examination or evaluation to any books, documents, papers, and records of the recipients of a grant, contract, loan or loan guarantee under Title XIII of the Act which relate to such assistance.

(c) A report shall be submitted to the Secretary by the recipient of a grant, contract, loan, or loan guarantee under Title XIII of the Act not later than 60 days after the termination date of each project, describing existing and anticipated plans, developments and operations in accordance with information required under section 1306(b)(3) of the Act.

(d) Such other reports shall be submitted as the Secretary may require to meet the provisions of the Act and these regulations.

§ 110.206 Additional conditions.

The Secretary may, with respect to the approval of any grant, contract, loan, or loan guarantee, impose additional conditions prior to or at the time of any approval when, in his judgment, such conditions are necessary to assure or protect advancement of the approved project, the interests of public health, or conservation of project funds.

§ 110.207 Nondiscrimination.

Attention is called to the requirements of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. 2000d et seq.) and in particular section 601 of such Act which provides that no person in the United States shall on the grounds of race, color, or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. A regulation implementing such Title VI, which applies to all financial assistance under this Part, has been issued by the Secretary of Health, Education, and Welfare with the approval of the President (45 CFR Part 80). In addition no person shall, on the grounds of sex, or creed (unless otherwise medically indicated) be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. Nor shall any person be denied employment in or by such program or activity so receiving Federal financial assistance on the grounds of age, sex, creed, or marital status.

§ 110.208 Inventions or discoveries.

A grant award is subject to the regulations of the Department of Health, Education, and Welfare as set forth in 45 CFR Parts 6, "Inventions and Patents (General)" and 8, "Inventions Resulting from Research Grants, Fellowship Awards, and Contracts for Research". Such regulations shall apply to any activity for which grant funds are in fact used whether within the scope of the project as approved or otherwise. Appropriate measures shall be taken by the grantee and by the Secretary to assure that no contracts, assignments or other arrangements inconsistent with the grant obligation are continued or entered into and that all personnel involved in the supported activity are aware of and comply with such obligations. Laboratory notes, related technical data, and information pertaining to inventions and discoveries shall be maintained for such periods, and filed with or otherwise made available to the Secretary or those he may designate at such times and in such manner as he may determine necessary to carry out such Department regulations.

§ 110.209 Publications and copyright.

Except as may otherwise be provided under the terms and conditions of the award, the applicant may copyright without prior approval any publications, films or similar materials developed or resulting from a project supported by a grant under this Part, subject, however, to a royalty-free, non-exclusive, and irrevocable license or right in the Government to reproduce, translate, publish, use, disseminate, and dispose of such materials and to authorize others to do so.

§ 110.210 Confidentiality.

Each grant award is subject to the condition that all information obtained by the personnel of the project from participants in the project related to their examination, care, and treatment shall be held confidential, and shall not be divulged without the individual's informed consent except as may be required by law or as may be necessary to provide service to the individual or to the Secretary as part of his duties under the Act. Information may be disclosed in summary, statistical, or other form which does not identify particular individuals.

§ 110.211 Applicability of 45 CFR Part 74.

The provisions of 45 CFR Part 74, establishing uniform administrative requirements and cost principles, shall apply to all grants and contracts under this Part to State and local governments as those terms are defined in subpart A of that Part 74. The relevant provisions of Part 74 shall also apply to all other grantee organizations under this Part.

§ 110.212 Use of funds.

Any grants, contracts, loans, and loan guarantees awarded pursuant to this Part as well as other Federal funds to be used in the performance of the approved project shall be expended solely for carrying out the approved project in accordance with the statute, the regulations of this Part, and the terms and conditions of the award or assistance.

Subpart C—Grants and Contracts for Feasibility Surveys

§ 110.301 Applicability.

The regulations of this subpart, in addition to the regulations of subpart B of this Part, are applicable to grants and contracts awarded pursuant to section 1303 of the Act for projects to conduct surveys or other activities to determine the feasibility of developing and operating or expanding the operation of health maintenance organizations.

§ 110.302 Eligibility.

(a) *Eligible applicants,* Any public or private nonprofit entity which is or proposes to develop or become a health maintenance organization is eligible to apply for an award under this subpart.

(b) *Eligible projects.* Awards may be made pursuant to section 1303 of the Act, the regulations of subpart B, and this subpart, to eligible applicants to assist in conducting surveys or other activities to determine the feasibility of developing or expanding the operation of organizations which meet or propose to meet the requirements under subpart A of these regulations.

§ 110.303 Project elements.

An approvable application must provide:

(a) Statements which describe in detail:

(1) The goals and objectives for the proposed health maintenance organization;

(2) The administrative, managerial, and organizational arrangements and resources to be utilized to conduct the feasibility study; and

(3) The intended financial participation of the applicant, specifying the type of contributions, such as cash or services, loans of full- or part-time staff, equipment, spaces, materials, or facilities or other contributions;

(b) An assurance that the applicant will cooperate with the areawide health planning agency;

(c) Written evidence of notification to the local medical societies of the applicant's intention to apply for assistance;

(d) Letters or other forms of evidence that there is support for and acceptance of the proposed health maintenance organization by the community which the applicant proposes to serve;

(e) Concise statements of the tasks planned to accomplish each activity listed below, accompanied by a time-phased milestone chart indicating proposed funding and manpower to be allocated to each activity:

(1) Identify pertinent State laws, regulations, and practices relating to operating as a health maintenance organization;

(2) Identify population groups which would be sources of prepayment and other potential sources of payment for services when the health maintenance organization becomes operational;

(3) Explore potential sources of professional services to provide basic health services;

(4) Develop an estimate of the premium to be charged for basic health services when the proposed health maintenance organization becomes operational;

(5) Develop an estimate of the enrollment and funds required to reach the financial breakeven point; and

(6) Develop a preliminary estimate of the facilities required for operational status, capital investments which will be required, and explore possible sources of financing to provide the proposed amount and type of services as an operational health maintenance organization;

(f) Where the application requests assistance for an existing organization which provides health care services financed on a prepaid capitation basis to an enrolled population and which is or which intends to become a health maintenance organization, the applicant must also include:

(1) An identification of gaps between the applicant's current operation and the requirements of subpart A of this Part which much be addressed by the applicant during expansion;

(2) The enrollment figure, amount and type of health benefits being offered, and premiums being charged at the time of application;

(3) Projections of the proposed significant expansion, as defined in § 110.-202(c);

(4) An income and expense report no older than six months;

(5) A description of the current contracts and arrangements for providing health services; and

(6) A description of other formal arrangements (risk, insurance, marketing, etc.).

§ 110.304 Evaluation and award.

Within the limits of funds available for such purpose, the Secretary may make awards to cover up to 90 percent of the cost of projects, or in the case of projects which will serve medically underserved populations, up to 100 percent of the costs, to those applicants whose projects will, in his judgment best promote the purposes of section 1303 of the Act and the regulations of this subpart, taking into account:

(a) The degree to which proposed project satisfactorily provides for elements set forth in § 110.303 above.

(b) The comments of the appropriate 314(b) agency.

(c) The degree to which the goals and objectives of the proposed project will promote the purposes of the Act and are consistent with the generally recognized capability of effectively organized and managed health maintenance organizations to reduce hospitalization, to contain medical care costs, to use effectively medical and allied health manpower, to emphasize early detection and treatment of illness, and to contribute to a better distribution and quality of health care.

(d) The capability of the applicant to organize and manage the project successfully.

(e) The soundness of the proposed plan for conducting the feasibility study and for assuring effective utilization of grant funds.

(f) The potential of the project to obtain indications of the willingness of basic medical and health care providers to participate in the operation of the health maintenance organization.

(g) The probability of financial viability based on potential sources of financial support for development and operations and potential osurces of enrollment.

(h) The inclusion of at least 30 percent of its projected enrollment from a medically underserved area.

(i) Location relative to the number of organizations providing health services to a defined population on a prepaid capitation basis, which are already operating in the proposed geographic area.

(j) The percentage of total anticipated enrollment to be drawn from nonmetropolitan areas to be served.

§ 110.305 Funding duration and limitation.

(a) The amount of any award shall be determined by the Secretary on the basis of his estimate of the sum necessary for project costs, provided, however, that any single grant may not exceed $50,000.

(b) Feasibility survey projects shall be completed within 12 months from the date of the award, provided that, for good cause shown, upon a written request and justification, the Secretary may extend such period for an additional time up to 12 months for completion of the project.

(c) The Secretary may make not more than one additional grant or enter into not more than one additional contract for a project for a feasibility survey for which a grant has previously been made or a contract previously entered into.

(d) Funds under grants and contracts for feasibility surveys shall be utilized only for the activities set forth in § 110.303(e).

Subpart D—Grants, Contracts, and Loan Guarantees for Planning and Initial Development Costs

§ 110.401 Applicability.

The regulations of this subpart, in addition to the regulations of subpart B of this Part 110, are applicable to:

(a) Grants and contracts awarded pursuant to section 1304 of the Act for projects for planning, and initial development of health maintenance organizations, and

(b) Guarantees made to non-Federal lenders of payment of the principal of and interest on loans made to private entities (other than nonprofit private entities) for such projects to serve medically underserved populations.

§ 110.402 Eligibility.

(a) *Eligible applicants.* Any public or nonprofit private entity, which is or which proposes to become a health maintenance organization, is eligible to apply for a grant or contract, and any private entity (other than a nonprofit private entity) which is or which proposes to become a health maintenance organization and which proposes to serve a medically underserved population is eligible to apply for a loan guarantee under this subpart.

(b) *Eligible projects.* (1) Awards of grants or contracts may be made pursuant to section 1304 of the Act and the regulations of subpart B and this subpart to eligible applicants for planning for the establishment of health maintenance organizations, or for the significant expansion of the membership of, or areas served by, health maintenance organizations meeting the requirements of subpart A of these regulations, or for the initial development or actual expansion of such organizations;

(2) Guarantees may be made pursuant to section 1304 of the Act and the regulations of subpart B and this subpart to eligible applicants for the payment of the principal of and the interest on loans for planning projects for the establishment of health maintenance organizations, or the expansion of existing health maintenance organizations meeting the requirements of subpart. A of these regulations, or for the initial development or actual expansion of such organizations: *Provided*, that at least 30 percent of the projected enrollees of such organizations are from medically underserved areas.

§ 110.403 Project elements for planning.

An approvable application must provide:

(a) Statements which describe in detail:

(1) The goals and objectives of the proposed health maintenance organization;

(2) The administrative, managerial, and organizational arrangements and resources to be utilized in the performance of the proposed activities; and

(3) The intended financial participation of the applicant, specifying the type of contributions such as services, loans of full- or part-time staff, equipment, space, materials, facilities, or other contributions.

(b) An assurance that the applicant will cooperate with the appropriate 314(b) agency.

(c) Written evidence of notification to the local medical societies of the applicant's intention to apply for assistance.

(d) Letters or other forms of evidence that there is support for and acceptance of the project by organizations, institutions, and/or employer groups which may participate in the development of the proposed health maintenance organization.

(e) A detailed report of the resutls of the survey or study which established the feasibility of developing the health maintenance organization, including information regarding each of the following:

(1) Status of the applicant in terms of pertinent State laws, regulations, and practices relating to operating as a health maintenance organization;

(2) Organizational structure of the proposed health maintenance organization;

(3) Providers of professional services who have agreed or might reasonbly be expected to agree to provide health benefits;

(4) Identification of the population groups which would be sources of prepayment for an operational health maintenance organization and other potential sources of payment for services when operational;

(5) Sources of payment and operational support including:

(i) Preliminary estimate of the premium to be charged for basic health benefits when the proposed health maintenance organization becomes operational; and

(ii) Estimate of enrollment and income required to reach the financial breakeven point; and

(6) A preliminary estimate of facilities required for operational status, additional capital investments required, and sources of financing to provide the proposed amount and type of services as an operational health maintenance organization.

(f) Concise statements of the tasks required to accomplish each activity listed below, accompanied by a time-phased milestone chart indicating proposed funding and manpower to be allocated to each such activity:

(1) Recruit key project staff;

(2) Plan for appropriate action relating to any State legal and/or regulatory restrictions;

(3) Develop formal organization;

(4) Establish community support;

(5) Refine market estimate made in feasibility survey;

(6) Develop health benefits plan;

(7) Develop premium structure;

(8) Develop plans for marketing of the services and enrollment of members;

(9) Develop budget and financial plan; and

(10) Develop preliminary physician service agreements.

(g) Where the application requests assistance for an existing organization which provides health care services financed on a prepaid capitation basis to an enrolled population and which is or which intends to become a health maintenance organization, the application shall also include;

(1) An identification of gaps between the applicant's current operation and the requirements of Subpart A which must be addressed by the applicant during expansion;

(2) The enrollment figure, amount and type of health benefits being offered, and the premium being charged at the time of application;

(3) Projections of the proposed significant expansion, as defined in § 110.202 (c);

(4) An income and expense report no older than six months;

(5) A description of the current contracts and arrangements for providing health services; and

(6) A description of other formal arrangements (risk, insurance, marketing, etc.).

§ 110.404 Project elements for initial development.

An approvable application must provide:

(a) Written evidence satisfactory to the Secretary that the feasibility of the establishment and operation or expansion has been established by the applicant and that sufficient planning for the establishment or expansion has been conducted by the applicant.

(b) An identification of the following activities which are appropriate to the project with concise statements of the tasks necessary to accomplish each identified activity, a time-phased milestone chart and the funding and manpower which would be allocated to each such activity:

(1) Develop a schedule to meet the requirements of subpart A of this Part;

(2) Recruit and train personnel essential for operation as a health maintenance organization;

(3) Develop a comprehensive financial plan;

(4) Organize physician services;

(5) Construct/renovate health maintenance organization facilities;

(6) Organize ambulatory care facility;

(7) Formalize contract arrangements; and

(8) Initiate enrollment plan.

(c) Signed letters from at least three physicians indicating that they intend or are willing to be employed by or to contract with the proposed health maintenance organization for the provision of basic health services to its enrollees; signed letters from one or more hospitals indicating that they intend to or are willing to negotiate an agreement to admit enrollees from the proposed health maintenance organization as necessary.

(d) When the applicant intends to serve Title XIX eligibles as part of the intended enrollment, evidence that the State Title XIX agency is willing to negotiate a prepaid capitation contract in the form of a letter from the State Title XIX agency.

(e) An application for expansion of an existing organization which provides health care services financed on a prepaid capitation basis to an enrolled population and which is or which intends to become a health maintenance organization shall also include:

(1) An identification of gaps between the applicant's current operation and the requirements of subpart A of this Part which must be addressed by the applicant during expansion;

(2) The enrollment figure, amount and type of health benefits being offered, and the premiums being charged at the time of application;

(3) Projections of the proposed significant expansion, as defined in § 110.202 (c);

(4) An income and expense report no older than six months;

(5) A description of the current contracts and arrangements for providing health services; and

(6) A description of other formal arrangements (risk, insurance, marketing, etc.).

§ 110.405 Funding duration and limitation.

(a) *Planning projects.* (1) The amount of any award shall be determined by the Secretary on the basis of his estimate of the sum necessary for project costs, provided, that any single grant or contract, and the amount of principal of any single loan guaranteed under section 1304 of the Act may not exceed $125,000.

(2) Planning projects shall be completed within 12 months from the date of the award, provided that for good cause shown, upon a written request and justification, the Secretary may extend such period for an additional time up to 12 months for completion of the project.

(3) The Secretary may not make more than one additional grant or loan guarantee or enter into not more than one additional contract for a planning project for which a grant or loan guarantee has previously been made or a contract previously entered into.

(4) Funds under grants, contracts, and loans guaranteed for planning projects shall be utilized only for the activities set forth in § 110.403(f) and for activities required to fill the gaps referred to in § 110.403(g)(1).

(b) *Initial development projects.* (1) The amount of any award shall be determined by the Secretary on the basis of his estimate of the sums necessary for project costs, provided, however, that the aggregate amount of loan guarantees, grants, and contracts for any initial development project may not exceed $1,000,000.

(2) A grant or contract may only be awarded for initial development costs in the one year period beginning on the first day of the month in which such award was made, and the combined number of grants made and contracts entered into for any initial development project under section 1304 of the Act may not exceed a total of three. A loan guarantee for an initial development project may only be made for a loan (or loans) for initial development costs incurred in a period not to exceed three years.

(3) Funds under grants, contracts, and loans guaranteed for projects for initial development shall be utilized only for the activities set forth in § 110.404 (b).

§ 110.406 Evaluation and award.

Within the limits of funds available for such purpose, the Secretary may make awards to cover up to 90 percent of the cost of projects, or in the case of projects which will serve medically underserved populations, up to 100 percent of the costs, to those applicants whose projects will, in his judgment, best promote the purposes of section 1304 of the Act and the regulations of this subpart, taking into account:

(a) The degree to which the proposed project satisfactorily provides for the

elements set forth in § 110.403 or § 110.404 of this subpart.

(b) The comments of the appropriate 314(b) or 314(a) agency.

(c) Whether the feasibility of the project has been established.

(d) The appropriateness of the goals and objectives of the proposed project.

(e) The effectiveness the proposed organization may reasonably be expected to have in reducing hospitalization, containing health care cost, using medical and allied health manpower, emphasizing early detection and treatment of illnesses, and achieving a better distribution and quality of care.

(f) The capability of the applicant to organize and manage the project successfully.

(g) Evidence of the applicant's intended contribution to the project.

(h) Evidence of intent from providers expressing a willingness to be employed by or contract with the proposed health maintenance organization for the provision of basic health services.

(i) Evidence, in the form of letters, from individuals, groups or organizations indicating that they support the development and operation of the proposed health maintenance organization.

(j) The results of marketing efforts and the prospects for eventual economic viability as an operational health maintenance organization without continued Federal support.

(k) The inclusion of medically underserved populations in groups to be enrolled.

(l) Geographic position relative to the number of organizations providing health services to a defined population on a prepaid capitation basis, which are already operating in the area.

(m) The percentage of anticipated total enrollment to be drawn from nonmetropolitan areas to be served.

§ 110.407 Loan guarantee provisions.

(a) *Disbursement of loan proceeds.* The principal amount of any loan guaranteed by the Secretary under this subpart shall be disbursed to the applicant in accordance with an agreement to be entered into between the parties to the loan and approved by the Secretary.

(b) *Length and maturity of loans.* The principal amount of each loan guarantee, together with interest thereon, shall be repayable over a period of 20 years, beginning on the date of endorsement of the loan guarantee by the Secretary. The Secretary may, however, approve a shorter repayment period where he determines that a repayment period of less than 20 years is more appropriate to an applicant's total financial plan.

(c) *Repayment.* The principal amount of each loan guarantee, together with interest thereon, shall be repayable in accordance with a repayment schedule which is to be agreed upon by the parties to the loan and approved by the Secretary prior to or at the time of his endorsement of the loan. Unless otherwise specifically authorized by the Secretary, each loan guaranteed by the Secretary shall be repayable in substantially level combined installments of principal and interest, to be paid at intervals not less frequently than annually, sufficient to amortize the loan through the final year of the life of the loan.

Subpart E—Loans and Loan Guarantees for Initial Operating Costs

§ 110.501 Applicability.

The regulations of this subpart, in addition to the regulations of subpart B, are applicable to loans and loan guarantees awarded pursuant to section 1305 of the Act.

§ 110.502 Definitions.

(a) "Operating cost" means any cost which under generally accepted accounting principles is not a capital expenditure.

(b) "First 36 months of operations" means the 36 months period running from the day when the health maintenance organization first provides services to members.

§ 110.503 Eligibility.

(a) *Eligible applicants.* Any public or nonprofit private health maintenance organization is eligible to apply for a loan. Any private health maintenance organization (other than a nonprofit private health maintenance organization) which will serve a medically underserved population is eligible to apply for a loan guarantee.

(b) Eligible projects.

(1) Loans may be made pursuant to section 1305 of the Act and the regulations of subpart B and this subpart to eligible applicants to assist them in meeting the amount by which their operating costs in the period of the first 36 months of their operation exceed their revenues in such period, or in meeting the amount by which their operating costs, which the Secretary determines are attributable to significant expansion in their membership or area served, as defined in § 110.202(c), and which are incurred in the period of the first 36 months of their operation after such expansion, exceed their revenues in that period which the Secretary determines are attributable to such expansion.

(2) Loan guarantees may be made pursuant to section 1305 of the Act and the regulations of subpart B and this subpart to guarantee to non-Federal lenders payment of the principal of and the interest on loans made to any private health maintenance organization (other than a private nonprofit health maintenance organization) for the amounts referred to in paragraph (b)(1) of this section, but only if such health maintenance organizations will serve a medically underserved population.

§ 110.504 Project elements.

An approvable application must provide:

(a) Statements which describe in detail:

(1) The applicant's adequate accomplishment of feasibility survey, planning, and development activities; and

(2) The health maintenance organization's management capability.

(b) Detailed information on the health maintenance organization's marketing plan and enrollment forecasts and experience.

(c) A detailed narrative statement describing:

(1) All existing and planned provider arrangements including copies of all executed contracts; and

(2) All facilities to be used in the delivery of health services.

(d) Financial information in such detail as the Secretary may prescribe.

(e) Evidence that any certificate of need required under State law for the operation of the health maintenance organization has been obtained by the applicant.

§ 110.505 Reserve requirement.

The applicant receiving a loan or loan guarantee under section 1305 of the Act shall establish a restricted reserve account beginning at the point when the revenues and expenditures of the health maintenance organization reach the breakeven point, or by the end of the 36-month period following the making of the loan or the guarantee under section 1305 of the Act, whichever is sooner, unless a longer period is approved by the Secretary. This reserve shall be so constituted as to accumulate no later than ten (10) years following the endorsement of the loan or loan guarantee, an aggregate amount equal to one year's principal of and interest on the loan, as determined under the terms of the loan made or guaranteed.

§ 110.506 Evaluation and award.

Within the limits of funds available for such purposes, the Secretary may award loans or loan guarantees to those applicants whose projects will, in his judgment, best promote the purposes of section 1305 of the Act and the regulations of the Part, taking into account:

(a) The ability of the health maintenance organization to achieve financial viability;

(b) The ability of the health maintenance organization to make repayments of the principal and interest when due and to have additional funds to defray the remaining operating deficits;

(c) The comments, if any, of the 314(b) or 314(a) agency;

(d) The relative distribution of qualified applicants with respect to the following factors:

(1) The inclusion of medically underserved populations in the groups to be enrolled;

(2) Geographical position relative to the number of organizations providing health services to a defined population on a prepaid capitation basis, which are already operating in the proposed area; and

(3) The percentage of anticipated total enrollment drawn from nonmetro-

politan areas served or to be served by the applicant.

§ 110.507 Funding duration and limitation.

(a) The principal amount of any loan made or guaranteed under section 1305 of the Act in any fiscal year for a health maintenance organization shall not exceed $1,000,000 and the aggregate amount of principal of loans made or guaranteed under section 1305 for a health maintenance organization shall not exceed $2,500,000.

(b) A loan or loan guarantee under section 1305 of the Act shall be limited to two-thirds of the Secretary's projection of the amount by which operating costs in the first 36 months of operation exceed revenues for such period, except as approved by written waiver by the Secretary for such higher percentage of the total operating deficit.

(c) The approval of any loan or loan guarantee shall not obligate the United States in any way to make any additional loan or loan guarantee with respect to the approved application or portion thereof, except as may be otherwise set forth in the agreement between the United States and the approved applicant.

§ 110.508 Loan provisions.

(a) *Disbursement of loan proceeds.* The principal amount of any loan made or guaranteed by the Secretary under this subpart shall be disbursed to the applicant in accordance with an agreement to be entered into between the parties to the loan and approved by the Secretary.

(b) *Length and maturity of loans.* The principal amount of each loan or loan guarantee, together with interest thereon, shall be repayable over a period of 20 years, beginning on the date of endorsement of the loan or loan guarantee by the Secretary. The Secretary may, however, approve a shorter repayment period where he determines that a repayment period of less than 20 years is more appropriate to an applicant's total financial plan.

(c) *Repayment.* The principal amount of each loan or loan guarantee, together with interest thereon, shall be repayable in accordance with a repayment schedule which is to be agreed upon by the parties to the loan or loan guarantee and approved by the Secretary prior to or at the time of his endorsement of the loan. Unless otherwise specifically authorized by the Secretary, each loan made or guaranteed by the Secretary shall be repayable in substantially level combined installments of principal and interest to be paid at intervals not less frequently than annually, sufficient to amortize the loan through the final year of the life of the loan.

Subpart F—Employee's Health Benefit Plans [Reserved]

Subpart G—Restrictive State Laws and Practices

§ 110.701 Restrictive laws and practices.

(a) In the case of any entity—

(1) Which cannot do business as a health maintenance organization in a State in which it proposes to furnish basic and supplemental health services because that State by law, regulation, or otherwise—

(i) Requires as a condition to doing business in that State that a medical society approve the furnishing of services by the entity,

(ii) Requires that physicians constitute all or a percentage of its governing body,

(iii) Requires that all physicians or a percentage of physicians in the locale participate or be permitted to participate in the provision of services for the entity, or

(iv) Requires that the entity meet requirements for insurers of health care services doing business in that State respecting initial capitalization and establishment of financial reserves against insolvency, and

(2) For which a grant, contract, loan, or loan guarantee was made under the Act or which is a qualified health maintenance organization for purposes of section 1310 of the Act (relating to employees' health benefits plans), such requirements shall not apply to that entity so as to prevent it from operating as a health maintenance organization in accordance with section 1301 of the Act and these regulations.

(b) No State may establish or enforce any law which prevents a health maintenance organization for which a grant, contract, loan, or loan guarantee was made under the Act or which is a qualified health maintenance organization for purposes of section 1310 of the Act (relating to employees' benefits plans), from soliciting members through advertising its services, charges, or other nonprofessional aspects of its operation. This subsection does not authorize any advertising which identifies, refers to, or makes any qualitative judgment concerning, any health professional who provides services for a health maintenance organization.

Subpart H—Continued Regulation of Health Maintenance Organizations [Reserved]

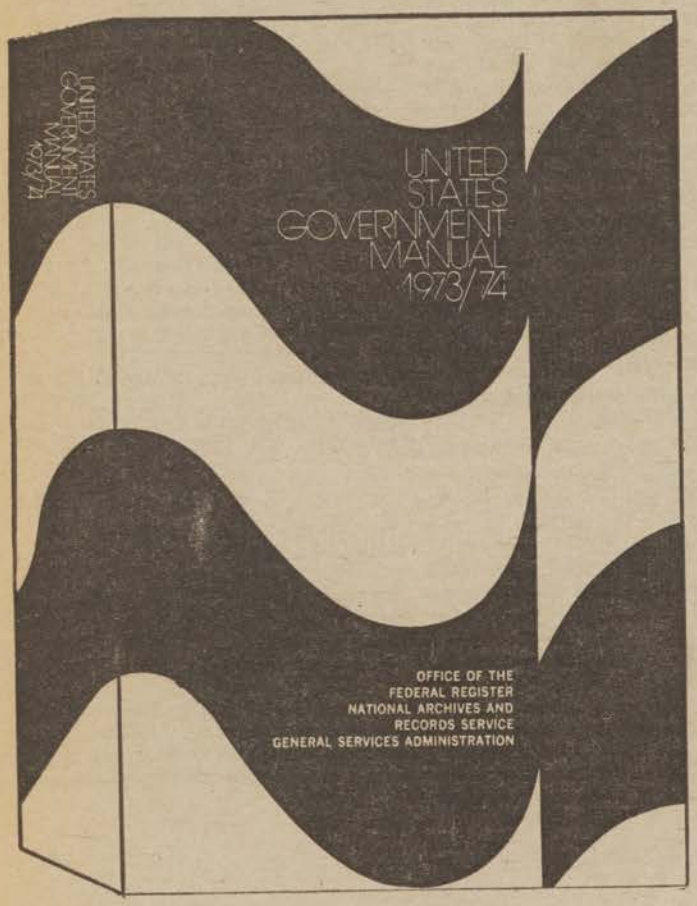
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