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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 6—Economic Stabilization

CHAPTER I—COST OF LIVING COUNCIL

PART 102—PUBLIC ACCESS TO RECORDS

Miscellaneous Amendments; Corrections

The document reissuing Part 102 of Chapter I of Title 6 of the Code of Federal Regulations, published in the FEDERAL REGISTER on August 15, 1973, at 38 FR 21972, is corrected by changing the reference: (1) in § 102.21 from "§§ 102.-10 through 102.12" to "§§ 102.11 through 102.13"; (2) in § 102.21(b)(2) from "102.-40" to "102.41"; (3) in § 102.31(a) from "§ 102.21" to "§ 102.22"; and (4) in § 102.-71(a) from "as last amended by the Economic Stabilization Act Amendments of 1972" to "as last amended by the Economic Stabilization Act Amendments of 1973".

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

[FR Doc.73-19562 Filed 9-11-73;12:34 pm]

PART 150—COST OF LIVING COUNCIL PHASE IV PRICE REGULATIONS

Special Rule No. 1

Special Rule No. 1 governing certain steel price increases is being issued pursuant to the authority of § 150.220 of the Phase IV price regulations.

The Cost of Living Council conducted public hearings on August 30 and 31, 1973, to take testimony with respect to the impact on the economy of proposed price increases by the steel industry. The Council, having reviewed the hearing record, considered other data presented to the Council and having analyzed the Notices of Proposed Price Increases submitted to the Council, has concluded that, notwithstanding the fact that the proposed price increases were generally cost justified, the implementation at this time, of full price increases for flat rolled steel products as well as proposed price increases on other blast furnace, steel work and steel rolling and finishing mill products would be of such magnitude and would have such an impact upon the economy as to be unreasonably inconsistent with the goals of the Economic Stabilization Program. Therefore, pursuant to the authority of § 150.154 of the Phase IV price regulations, the Council has concluded that orders must be issued deferring the price increases prenotified by firms in the steel industry. By virtue of this special rule, the Council is setting forth the general terms and conditions which it will apply to these proposed steel price increases. The Council will supplement this special rule by individual decisions and orders issued to the firms which have filed prenotifications. These decisions and orders will implement the general provisions of this special rule as to each such individual firm in a manner consistent with the special rule.

In consideration of the foregoing, Title 6, Code of Federal Regulations is amended as set forth below.

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

Issued in Washington, D.C., on September 10, 1973.

JOHN T. DUNLOP,
Director,
Cost of Living Council.

Subpart J is amended by adding an Appendix which reads as follows:

APPENDIX

SPECIAL RULE NUMBER 1

1. *Scope.*—This special rule applies to all firms which have prenotified proposed price increases for any steel product in Standard Industrial Code Number 331.

2. *Flat rolled steel products.*—Proposed price increases for flat rolled steel products may be implemented in accordance with the provisions of this paragraph.

a. No firm may place into effect a price increase on any flat rolled steel product prior to October 1, 1973.

b. Effective October 1, 1973, firms may increase prices above base prices for flat rolled steel products which do not exceed, on the average, a dollar-for-dollar pass through of one half of that portion of the allowed prenotified price increase above average prices charged during the most recent accounting period.

c. Effective January 1, 1974, firms may increase prices above base prices for flat rolled steel products which reflect the balance of the allowed prenotified price increases filed by those firms.

d. Any such increases put into effect must comply with the provisions of § 150.74 of the Phase IV price regulations.

3. *Other products.*—No firm shall place into effect a price increase for any steel product identified in Standard Industrial Code Number 331 other than flat rolled steel products. Price Category I firms may file notices of proposed price increases governing such other products on or before December 1, 1973. The 30-day prenotification period with respect to such filings will commence on December 1, 1973, or the date of the filing of the notice of proposed price increase with the Council, whichever is later.

4. *Price monitoring plans.*—Firms increasing prices for flat rolled steel products pursuant to this special rule and a decision and order of the Council shall file with the Council a price monitoring plan describing the percent and dollar amount of price increases and estimated weighted average price increase. This plan shall be filed by October 30, 1973.

5. *Decisions and orders.*—The Council will issue to each firm prior to October 1, 1973, a decision and order specifying implementation of allowed price increases for flat rolled steel products in accordance with the provisions of this special rule.

6. *Reservation.*—This rule may be modified, revoked or otherwise altered by the Council in accordance with the provisions of the Phase IV price regulations.

[FR Doc.73-19563 Filed 9-11-73;12:34 am]

Title 7—Agriculture

CHAPTER VIII—AGRICULTURAL STABILIZATION AND CONSERVATION SERVICE (SUGAR), DEPARTMENT OF AGRICULTURE

SUBCHAPTER H—DETERMINATION OF WAGE RATES

[Docket No. SH-317]

PART 864—SUGARCANE; LOUISIANA

Fair and Reasonable Wage Rates

The Sugar Act requires Louisiana sugarcane producers, as one of the conditions with which they must comply to be eligible for government payments under the act, to pay all workers employed in the production, cultivation, and harvesting of sugarcane in full at not less than minimum wage rates determined by the Secretary of Agriculture to be fair and reasonable. Such determination may not be made until after investigation and opportunity for interested persons to testify on whether the wage rates established under the previous year's determination continue to be fair and reasonable or whether such determination should be amended. A public hearing was held at Houma, Louisiana, on June 5, 1973.

The determination, which becomes effective on September 17, 1973, increases the minimum wage rate for operators of mechanical equipment by 15 cents per hour, and the minimum for hand labor is increased by 10 cents per hour.

Pursuant to the provisions of section 301(c)(1) of the Sugar Act of 1948, as amended (herein referred to as "act"), after investigation and consideration of the evidence obtained at the public hearing held in Houma, La., on June 5, 1973, the following determination is hereby issued. The regulations previously appearing in these sections under "Determination of Wage Rates; Sugarcane; Louisiana" remain in full force and effect as to the crops to which they were applicable.

Sec.
864.23 Requirements.
864.24 Applicability of wage requirements.
864.25 Payment of wages.
864.26 Evidence of compliance.
864.27 Subterfuge.
864.28 Claim for unpaid wages.
864.29 Failure to pay all wages in full.
864.30 Checking compliance.

AUTHORITY: Secs. 301, 403, 61 Stat. 929, as amended, 932 (7 U.S.C. 1131, 1153).

§ 864.23 Requirements.

A producer of sugarcane in Louisiana shall be deemed to have complied with the wage provisions of the act if all persons employed on the farm in production, cultivation, or harvesting work, as provided in § 864.24, shall have been paid in accordance with the following:

(a) *Wage rates.*—All such persons shall have been paid in full for all such work and shall have been paid wages in cash therefor at rates required by existing legal obligations, regardless of whether those obligations resulted from an agreement (such as a labor union agreement) or were created by State or Federal legislative action, or at rates as agreed upon between the producer and the worker, whichever is higher, but not less than the following, which shall become effective on September 17, 1973, and shall remain in effect until amended, superseded, or terminated:

(1) *Work performed on a time basis.*

Class of worker:	Rate per hour
Harvest work:	
Harvester, loader, and transfer loader operators	2.10
Tractor drivers, truck drivers, harvester bottom blade operators, and hoist operators	2.05
All other harvesting workers	1.90
Production and cultivation work:	
Tractor drivers	2.00
All other production and cultivation workers	1.90

(2) *Workers 14 and 15 years of age and full-time students when employed on a time basis.*—For workers 14 and 15 years of age and full-time students 14 years of age or older employed on a part-time basis (not to exceed 20 hours in any work week during the time school is in session) or on a part-time or a full-time basis during school vacations, the rate shall be not less than 85 percent of the applicable hourly rate for the class of worker prescribed in paragraph (a) (1) of this section. (The act provides that the employment of workers under 14 years of age, or the employment of workers 14 and 15 years of age for more than 8 hours per day, will result in a deduction from Sugar Act payments to the producer.)

(3) *Handicapped workers when employed on a time basis.*—The wage rate for workers certified by the Regional Director, Wage and Hour Division, U.S. Department of Labor, 1931 Ninth Avenue South, Birmingham, Ala. 35205, to be handicapped because of age or physical or mental deficiency or injury, and whose productive capacity is thereby impaired, shall be not less than 75 percent of the applicable hourly rate for the class of worker prescribed in subparagraph (1) of this paragraph.

(4) *Work performed on a piecework basis.*—The piecework rate for any operation shall be as agreed upon between the producer and the worker. The hourly rate of earnings of each worker employed on piecework during each pay period (not to be in excess of two weeks) shall average for the time worked at piecework rates during such pay period not less than the applicable hourly rate for the class of worker prescribed in paragraph (a) (1), (2), and (3) of this section.

(b) *Compensable working time.*—For work performed under paragraph (a) of this section, compensable working time commences at the time the worker is required to start work and ends upon completion of work in the field, except time taken out for meals during the working day. If the producer requires the operator of mechanical equipment, driver of animals, or any other class of worker to report to a place other than the field, such as an assembly point or a tractor shed located on the farm, the time spent in transit from such place to the field and from the field to such place is compensable working time. Time spent in performing work directly related to the principal work performed by the worker, such as servicing equipment, is compensable working time. Time of the worker while being transported from a central recruiting point or labor camp to the farm is not compensable working time.

(c) *Equipment necessary to perform work assignment.*—The producer shall furnish without cost to the worker any equipment required in the performance of any work assignment. The worker may be charged for the cost of such equipment in the event of its loss or destruction through negligence of the worker. Equipment includes, but is not limited to, hand and mechanical tools and special wearing apparel, such as boots and raincoats, required to discharge the work assignment.

§ 864.24 Applicability of wage requirements.

The wage requirements of this part apply to all persons who are employed or who work on the farm in operations directly connected with the production, cultivation, or harvesting of sugarcane on any acreage from which sugarcane is marketed or processed for the production of sugar, harvested for seed or any acreage which qualifies as bona fide abandoned. Such persons include field overseers or supervisors while directing other workers, and those workers employed by an independent contractor who perform services on the farm. The wage requirements are not applicable to persons who voluntarily perform work without pay on the farm for a religious or charitable institution or organization; inmates of a prison who work on a farm operated by the prison; truck drivers employed by a contractor engaged only in hauling sugarcane; members of a cooperative arrangement among producers for the exchange of labor to be performed by themselves or members of their families; persons who have an agreement with the producer to perform all work on a specified acreage in return for a share of the crop or crop proceeds if such share, including the share of any Sugar Act payments, results in earnings at least as much as would otherwise be received in accordance with the requirements of this part for the work performed; custom operators or independent contractors and members of their immediate families; or workers performing services which are indirectly connected with the production, cultivation, or harvesting of sugarcane, including but not limited to mechanics, welders, and other maintenance workers and repairmen.

§ 864.25 Payment of wages.

Workers shall be paid by check or in currency for all work performed, except to the extent that the cash payment is reduced by the following deductions: Cash advances made to the worker by the producer; the market value or the amount agreed upon for supplies furnished by the producer at the request of the worker; meals, lodging, and transportation expense which the producer agreed to furnish for a stated amount; and mandatory deductions such as taxes and Social Security contributions. In addition, a producer may deduct the amounts he has paid to a third party on behalf of the worker in connection with his employment as a farm worker which are acknowledged in writing signed by the worker or his agent or substantiated by other evidence acceptable to the county ASC committee to be an indebtedness of the worker, and which cover the expense of services and benefits furnished the worker by the third party, and which the worker or his agent has agreed may be deducted from his wages, such as public utilities, medical services, group hospitalization or other insurance for the benefit of the worker. As evidence of payments to a third party for which a deduction is made from the earnings of a worker, the producer shall maintain for a period of 3 years, for the inspection of the worker and the local county ASCS office, receipted bills or other written satisfactory evidence that support such deductions. Payments made to a labor contractor, supervisor, or labor trainer, or the cost of meals, lodging, transportation, and insurance covering injury or illness resulting from employment, any or all of which the producer agreed to furnish the worker free of charge, shall not be deducted from cash wages due the worker. When any deductions are made, the producer shall furnish to the worker, at time of settlement, a statement showing the gross amount of wages due for work performed and the amount of each deduction properly identified.

§ 864.26 Evidence of compliance.

Each producer subject to the provisions of this part shall keep and preserve,

for a period of 3 years following the date on which his application for a Sugar Act payment is filed, such wage records as will demonstrate that each worker has been paid in full in accordance with the requirements of this part. Wage records should set forth dates work was performed, the class of work performed, units of work (piecework or hours), agreed upon rates per unit of work, total earnings and any permissible deductions, and the amount paid each worker. The producer shall furnish upon request to the appropriate Agricultural Stabilization and Conservation County Committee such records or other evidence as may satisfy such committee that the requirements of this part have been met.

§ 864.27 Subterfuge.

The producer shall not reduce the wage rates to workers below those determined in accordance with the requirements of this part through any subterfuge or device whatsoever.

§ 864.28 Claim for unpaid wages.

Any person who believes he has not been paid in accordance with this part may file a wage claim with the local Agricultural Stabilization and Conservation County Committee against the producer on whose farm the work was performed. Such claim must be filed on Form SU–191, entitled "Claim Against Producer for Unpaid Wages" within 2 years from the date the work with respect to which the claim is made was performed. Detailed instructions and Forms SU–191 are available at the local county ASCS office. Upon receipt of a wage claim the county office shall thereupon notify the producer against whom the claim is made concerning the representation made by the worker. The county ASC committee shall arrange for such investigation as it deems necessary and the producer and worker shall be notified in writing of its recommendation for settlement of the claim. If either party is not satisfied with the recommended settlement, an appeal may be made to the Louisiana State Agricultural Stabilization and Conservation Committee, 3737 Government Street, Alexandria, La. 71303, which shall likewise consider the facts and notify the producer and worker in writing of its recommendation for settlement of the claim. If the recommendation of the State ASC committee is not acceptable either party may file an appeal with the Deputy Administrator, Programs, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture, Washington, D.C. 20250. All such appeals shall be filed within 15 days after the date the written notice of the recommended settlement is mailed by the respective committee, otherwise such recommended settlement will be applied in making payments under the act. If a claim is appealed to the Deputy Administrator, Programs, his decision shall be binding on all parties insofar as payments under the act are concerned. Appeals procedures are set forth and explained fully in Part 780 of this title.

§ 864.20 Failure to pay all wages in full.

(a) Notwithstanding the provisions of this part requiring that all persons employed on the farm in the production, cultivation, or harvesting of sugarcane be paid in full for all such work as one of the conditions to be met by a producer for payment under the act, if the producer has failed to meet this condition but has met all other conditions, a portion of such payment, representing the remainder after deducting from the payment the amount of accrued unpaid wages, may be disbursed to producer(s) upon a determination by the county committee (1) that the producer has made a full disclosure to the county committee or its representatives of any known failure to pay all workers on the farm wages in full as a condition for payment under the Sugar Act; and (2) that either (i) the failure to pay all workers their wages in full was caused by the financial inability of the producer, or (ii) the failure to pay all workers in full was caused by an inadvertent error or was not the fault of the producer or his agent, and the producer has used reasonable diligence to locate and to pay in full the wages due all such workers. If the county committee makes the determination as heretofore provided in this paragraph, such committee shall cause to be deducted from the payment for the farm the full amount of the unpaid wages which shall be paid promptly to each worker involved if he can be located, otherwise the amount due shall be held for his account, and the remainder of the payment for the farm, if any, shall be made to the producer. If the county committee determines that the producer did not pay all workers in full because of an inadvertent error that was not discovered until after he received his Sugar Act payment, the producer shall be placed on the claims control record for the total amount of the unpaid wages.

(b) Except as provided in paragraph (a) of this section, if upon investigation the county committee determines that the producer failed to pay all workers on the farm the required wages, the entire Sugar Act payment with respect to such farm shall be withheld from the producer until such time as evidence is presented to the county committee which will satisfy the county committee that all workers have been paid in full the wages earned by them; or if unpaid workers cannot be located and the county committee determines that the producer used reasonable diligence to locate such workers, the amounts of unpaid wages shall be deducted from the Sugar Act payment computed for the farm and the balance released to the producer after the expiration of 1 year from the date payment would otherwise be made. If payment had been made to the producer prior to the county committee's determination that all workers on the farm have not been paid in full, the producer shall be placed on the claims control record for the total payment until the county committee determines that all workers on the farm have been paid in full, the producer refunds the entire amount of the debt, or a setoff in the amount of the debt is made from a program payment otherwise due the producer, or the county committee after determining that the producer used reasonable diligence to locate such workers has recovered from such producer the amount of unpaid wages computed for the farm.

§ 864.30 Checking compliance.

The procedures to be followed by county ASCS offices in checking compliance with the wage requirements of this part are set forth under the heading "Wage Rate Determinations" in Handbook 3–SU, issued by the Deputy Administrator, Programs, Agricultural Stabilization and Conservation Service. Handbook 3–SU may be inspected at local county ASCS offices, and copies may be obtained from the Louisiana State ASCS Office, 3737 Government Street, Alexandria, La. 71303.

STATEMENTS OF BASES AND CONSIDERATIONS

General.—The foregoing determination provides fair and reasonable wage rates to be paid for work performed by persons employed on the farm in the production, cultivation, or harvesting of sugarcane in Louisiana as one of the conditions with which producers must comply to be eligible for payments under the act.

Requirements of the act and standards employed.—Section 301(c)(1) of the act requires that all persons employed on the farm in the production, cultivation, or harvesting of sugarcane with respect to which an application for payment is made, shall have been paid in full for all such work, and shall have been paid wages therefor at rates not less than those that may be determined by the Secretary to be fair and reasonable after investigation and due notice and opportunity for public hearing, and in making such determinations, the Secretary shall take into consideration the standards therefor formerly established by him under the Agricultural Adjustment Act, as amended (i.e., cost of living, prices of sugar and by-products, income from sugarcane, and cost of production), and the differences in conditions among various sugar-producing areas.

Wage determination.—This determination differs from the prior determination in that minimum hourly wage rates are increased by 15 cents per hour for all operators of mechanical equipment and by 10 cents per hour for unskilled workers. The new minimum hourly wage rates established for work during the harvest season are $2.10 for harvester, loader, and transfer loader operators; $2.05 for tractor and truck drivers, and harvester bottom blade and hoist operators; and $1.90 for all other workers. During the production and cultivation season, minimum wages are $2.00 for tractor drivers and $1.90 for all other workers. Other provisions of the prior determination continue unchanged.

A public hearing was held in Houma, La., on June 5, 1973, at which interested persons were afforded the opportunity to testify on whether the wage rates established for Louisiana sugarcane fieldworkers in the wage determination which became effective on October 23, 1972 (the effective date of which was changed to October 1, 1972—see 38 FR 18453), continue to be fair and reasonable under the circumstances, or whether such determination should be amended.

Witnesses appearing at the public hearing on behalf of sugarcane fieldworkers recommended a minimum wage rate of $3.53 per hour for all workers. Several witnesses recommended that one wage scale prevail for both harvesting and cultivating seasons. Others recommended that Louisiana sugarcane fieldworkers' wages be made equal to cane workers' wages in Florida; that workers be paid time and one-half for overtime along with some vacation pay; that workers be given a paid holiday in order to attend the wage hearings; and that the Department require that sugarcane workers who are paid on an hourly basis be paid every two weeks.

Several worker representatives indicated that the Secretary should appoint an independent commission to investigate living and working conditions of Louisiana sugarcane workers before the 1973 crop determination is made and that it be part of the hearing officers' responsibility to visit farms and homes of growers and workers.

Worker representatives further recommended that the Department enforce minimum Federal Standards for housing; that the perquisites provision for housing conditions that was removed from the wage determination in 1955 be reintroduced; that the Department enforce Federal Occupational Safety and Health legislation in harvesting of cane; and that the Department adopt a provision making health and life insurance mandatory for machine operators at minimal cost to the worker.

In support of their recommendations on wage rates, worker representatives testified that a Louisiana sugarcane worker works an average of 1,756 hours a year, has an average family consisting of 7 persons, and therefore, under current poverty guidelines established by the Department of Labor, should expect to earn at least $3.53 an hour in order to survive at the poverty level; and that it was not reasonable for the Federal Government to establish a poverty level and then establish wages below the poverty level in an industry it controls; that the workers' living conditions are substandard, they are deprived of adequate education, and consequently undergo social dehumanization. They further testified that the increase in the cost of living is currently about 9 percent, annually, and that the food component of the cost of living is increasing at an annual rate of 20 percent since October 1972.

With regard to other recommendations, worker representatives testified that many workers were injured and several died as a result of harvest-related accidents during the 1972 crop; that workers are at a disadvantage at the wage hearings because their ability to appear is curtailed by transportation cost and loss of income when taking off work to attend; and that surveys have shown poor housing conditions on farms in the cane area, about which more detailed information will be presented at next year's hearing.

Representatives of sugarcane producers recommended that there be no change in the number of worker classifications for production and cultivation and harvest work; and that equipment operators cutting and loading seed cane be included with tractor drivers under a general classification to be entitled "Production and Cultivation and Planting Work." They also recommended that the minimum rate for equipment operators be increased by 10 cents to rates ranging from $1.95 to $2.05, and that rates for unskilled workers be increased by 5 cents to $1.85 per hour; that field overseers and supervisors be excluded from the minimum wage determination; and that the determination provide a minimum rate for full-time students and workers 14 and 15 years of age of not less than 80 percent of the applicable hourly rate, as opposed to the current 85 percent minimum.

In support of the recommendation that harvester and loader operators engaged in the cutting of seed cane be classified as skilled production and cultivation workers rather than skilled harvest workers, the grower representatives stated that planting is a part of production and not a part of harvest; that workers engaged in planting operations are not working under the same continuous pressure as those cutting or loading cane during the harvest season; that planting work is performed under considerably better weather conditions than harvesting work; and that the higher wage during harvesting is desirable as an incentive to minimize absenteeism.

In support of their other recommendations, growers testified that field overseers or supervisors are relatively well-paid salaried employees whose wages are well above the minimums set by the Department, but who have no well-defined working hours which presents difficulty in keeping time records; that full-time students and workers 14 and 15 years of age are usually assigned work that is supplemental and normally would not be economically justified if performed by adult workers at the specified wage rates; that the 10 cents per hour wage increase for operators of mechanical equipment would approximate the increase in the cost of living; and that the recommended increase of 5 cents per hour for the categories of "all other workers" is actually not economically justifiable and could price workers out of the labor market because the value of the worker's service may not equal the wage.

One witness, testifying on behalf of the American Sugar Cane League, presented an analysis of economic conditions on Louisiana sugarcane farms. He stated that wage rates have been increased every year since 1961 even in years of adverse growing and harvesting conditions. He further stated that unless increases in costs of labor per unit are offset by increases in efficiency, total labor costs per unit as well as total costs of producing an acre or a ton of sugarcane can be expected to increase; and that unless income can be expected to continue to increase sufficiently to offset these increases in costs, which appears unlikely, net incomes of sugarcane farmers can be expected to decrease. The witness stated that his data base, consisting of 52 large-scale and 381 family-type sugarcane farms, is reasonably representative of about 94 percent of the State's sugarcane farms and nearly 100 percent of the sugarcane area.

Consideration has been given to the testimony and recommendations presented at the public hearing; to the returns, costs, and profits of producing sugarcane obtained by field survey for recent crops and recast in terms of price and production conditions likely to prevail for the 1973 crop; and to other standards generally considered in wage determinations, including the cost of living and the producers' ability to pay wages.

A principal purpose of the Sugar Act is to protect the welfare of those engaged in the domestic sugar-producing industry. The act, through a system of conditional payments to growers, assures that all parties engaged in the production and processing of sugar crops share equitably in the proceeds of the industry. Conditional payments act as an incentive to growers to adjust their production to quota and carryover needs. This payment system also has three other objectives: (1) to provide adequate income to growers; (2) to assure growers and fieldworkers a fair sharing of returns to the industry; and (3) to prevent the employment of child labor in fieldwork. The sharing of returns between growers and fieldworkers is accomplished by requiring growers to pay fieldworkers in full for work performed and at rates not less than those determined by the Secretary to be fair and reasonable.

Worker representatives generally recommended that wage rates for the various categories of workers be increased to a minimum of $3.53 per hour (hourly increases ranging from $1.58 to $1.73). Producer representatives recommended increases of 10 cents per hour for all classifications of skilled workers (operators of mechanical equipment) and 5 cents per hour for unskilled workers. This determination increases the minimum wage rates for equipment operators by 15 cents per hour and for "all other workers" by 10 cents per hour. The wage differential between unskilled and skilled workers has been widened to more equitably reflect the differences in worker responsibilities. It is also believed that a greater increase in wages at this time for unskilled workers would place their minimum wage rate at a level greater than the value of their services, which in turn would have the effect of curtailing their

job opportunities. The wage increases established in this determination for the various worker classifications range from 5.6 to 8.1 percent.

Based upon the "Consumer Price Index" as published by the Bureau of Labor Statistics of the U.S. Department of Labor, the cost of living rose 3.3 percent in 1972 as compared to 1971. Concurrently, the increase in minimum wage rates of Louisiana sugarcane workers averaged about 12 percent. Using data presently available, the Department anticipates that the cost of living will increase by about 6 percent in 1973. The increase in minimum wage rates established in this determination is expected to offset the continuing rise in living costs. The earnings of all workers on sugarcane farms in Louisiana are expected to average about $2.06 per hour in 1973, or 46 cents more than the projected average general farm wage in the State.

It is estimated that producers on average had a more profitable crop in 1972 than during the prior three crop years when producers were in a loss position for two of those crops after allowing for a 5 percent return on the net worth of their sugarcane operation. Based on the average yield of cane per acre (24 tons) forecast by the USDA Crop Reporting Board in the August 1973 issue of "Crop Production;" the 5-year averages of sucrose content and recovery of sugar; the prospective prices of raw sugar and molasses; and the anticipated prices to be paid by producers for wages and other production costs, producers' profit from the 1973 crop is expected to be more favorable than from the 1972 crop. If the minimum wage rate under this determination were to be established at $3.53 per hour, the projected profit to producers would be reduced by two-thirds. A thorough analysis of the costs and returns for producing sugarcane at the level of production likely to prevail for the 1973 crop indicates that the wage rates established in this determination are fair and reasonable to workers and within the ability of producers to pay. The recommendation by worker representatives that the same wage scale prevail for harvest workers and production and cultivation workers has not been adopted. It is believed that the continuation of rate differentials during the two seasons for tractor drivers is desirable at this time, especially in view of the producers' testimony that higher wages during the harvest season acts as an incentive to minimize absenteeism.

The recommendations made by worker representatives that the Department adopt provisions requiring producers to furnish workers with health and life insurance, unemployment compensation, and overtime and vacation pay have not been adopted. The wage rates established in wage determinations under the Sugar Act are minimum cash wages, and extra items such as insurance are matters for negotiation between the worker and producer.

Worker representatives also recommended that the Department enforce Federal minimum housing standards and the reinstatement of the "perquisites" occupational safety and health regulations. One representative recommended provision contained in the 1954 wage determination but deleted in subsequent determinations in accordance with the recommendation of worker representatives at the July 29, 1955, Louisiana wage hearing. That provision required producers to furnish workers such things as a habitable house, water, garden plots, livestock feed, and electricity so long as these items had customarily been furnished. As a result of a field investigation in July of 1955, the Department concluded that there were wide variations in the quality (and thus value) of the various items of perquisites furnished and that equitable administration of the provision was impossible. As noted above, the benefits of the U.S. sugar program are divided among growers and workers as well as others engaged in the industry. In insuring a fair division of the benefits of the sugar program, the Department takes the view that it is in the best interest of workers to receive all of their benefits in the form of cash wages. Moreover, it is not possible for the Department to assign realistic current values to the myriad of items which can be considered as perquisites, even those relating solely to housing, for the "average" worker. The result would be unfair treatment for producers or workers, or both. The Department deems it advisable to avoid the unnecessary duplication of efforts among government agencies wherever possible. For those producers who voluntarily furnish housing to their employees, such housing is subject to the housing and sanitary regulations issued under the Occupational Safety and Health Act of 1970, for which the Department of Labor is responsible. The dual enforcement of that Act by this Department with respect to sugar farms would be impractical as well as an unjustified duplication of efforts and resources.

The recommendations by worker representatives that the Secretary of Agriculture appoint an independent commission to investigate living and working conditions of Louisiana sugarcane workers, and that part of the hearing officers' responsibility be to visit the farms and homes have not been adopted. Again, under the terms of current legislation, wage determinations provide for a fair and equitable division of proceeds from the production of sugar crops among producers and workers. State and County ASC Committees and their staffs supply current, accurate information to the Department on payment of wages and any special problems which might arise. Moreover, the Department periodically sends a team of qualified cost accountants to the Louisiana cane area to gather data relating to earnings, man-hour requirements, production costs, and proceeds from the crop. The Department does not have the resources to institute further data gathering techniques in addition to those already at its disposal.

The recommendations by producer representatives concerning the wage rate for harvester and loader operators when harvesting sugarcane for seed; the exclusion of field overseers and supervisors from minimum wage requirements have these provisions continue to be equitable for the reason set forth in the statement of bases and considerations which accompanied the wage determination that became effective October 1, 1972.

The recommendation by producers that the permissible minimum wage rate for workers 14 and 15 years of age and full-time students be lowered to 80 percent of the applicable determination rate has not been adopted. That action would be inconsistent with the general standards for such employment under the Fair Labor Standards Act, as amended in 1966. Reference in § 864.23(a)(2) to the certificate from the Secretary of Labor needed for the employment of full-time students under the provisions of section 14 of the Fair Labor Standards Act has been removed. That section does not apply to students employed pursuant to this determination since the rates established herein, even if reduced to the 85 percent level, would still exceed the minimum rate provided for agricultural workers in section 6 of the Fair Labor Standards Act.

This determination is issued on a continuing basis and will remain in effect until amended, superseded, or terminated. However, the Department will keep the wage situation under review and will conduct investigations and hold hearings annually.

On the basis of an examination of all relevant factors, the provisions of this determination are deemed to be fair and reasonable. Accordingly, I hereby find and conclude that the foregoing wage determination will effectuate the wage provisions of the Sugar Act of 1948, as amended.

NOTE.—The recordkeeping and reporting requirements of these regulations have been approved by, and subsequent recordkeeping and reporting requirements will be subject to the approval of the Office of Management and Budget in accordance with the Federal Reports Act of 1942.

Effective date.—This determination shall become effective on September 17, 1973.

Signed at Washington, D.C., on September 7, 1973.

KENNETH E. FRICK,
Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc.73-19472 Filed 9-12-73;8:45 am]

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

[Valencia Orange Regulation 449]

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

Limitation of Handling

This regulation fixes the quantity of California-Arizona Valencia oranges that may be shipped to fresh market during the weekly regulation period Sept. 14–20,

not been adopted. It is believed that 1973. It is issued pursuant to the Agricultural Marketing Agreement Act of 1937, as amended, and Marketing Order No. 908. The quantity of Valencia oranges so fixed was arrived at after consideration of the total available supply of Valencia oranges, the quantity of Valencia oranges currently available for market, the fresh market demand for Valencia oranges, Valencia orange prices, and the relationship of season average returns to the parity price for Valencia oranges.

§ 908.749 Valencia Orange Regulation 449.

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

(2) The need for this regulation to limit the respective quantities of Valencia oranges that may be marketed from District 1, District 2, and District 3 during the ensuing week stems from the production and marketing situation confronting the Valencia orange industry.

(i) The committee has submitted its recommendation with respect to the quantities of Valencia oranges that should be marketed during the next succeeding week. Such recommendation, designed to provide equity of marketing opportunity to handlers in all districts, resulted from consideration of the factors enumerated in the order. The committee further reports that the fresh market demand for Valencia oranges is strengthening. Prices f.o.b. averaged $3.35 per carton on a sales volume of 459 carlots during the week ended September 6, 1973, compared with $3.27 per carton on sales of 477 carlots a week earlier. Track and rolling supplies at 248 cars were down 46 cars from last week.

(ii) Having considered the recommendation and information submitted by the committee, and other available information, the Secretary finds that the respective quantities of Valencia oranges which may be handled should be fixed as hereinafter set forth.

(3) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this regulation until 30 days after publication hereof in the FEDERAL REGISTER (5 U.S.C. 553) because the time intervening between the date when information upon which this regulation is based became available and the time when this regulation must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. The committee held an open meeting during the current week, after giving due notice thereof, to consider supply and market conditions for Valencia oranges and the need for regulation; interested persons were afforded an opportunity to submit information and views at this meeting; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after such meeting was held; the provisions of this regulation, including its effective time, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such Valencia oranges; it is necessary, in order to effectuate the declared policy of the act, to make this regulation effective during the period herein specified; and compliance with this regulation will not require any special preparation on the part of persons subject hereto which cannot be completed on or before the effective date hereof. Such committee meeting was held on September 11, 1973.

(b) *Order.*—(1) The respective quantities of Valencia oranges grown in Arizona and designated part of California which may be handled during the period September 14, 1973, through September 20, 1973, are hereby fixed as follows:

(i) District 1: Unlimited;

(ii) District 2: 525,000 cartons;

(iii) District 3: Unlimited.

(2) As used in this section, "handled", "District 1", "District 2", "District 3", and "carton" have the same meaning as when used in said amended marketing agreement and order.

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

Dated: September 12, 1973.

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

[FR Doc.73-19674 Filed 9-12-73;11:34 am]

Title 12—Banks and Banking

CHAPTER III—FEDERAL DEPOSIT INSURANCE CORPORATION

SUBCHAPTER B—REGULATIONS AND STATEMENTS OF GENERAL POLICY

PART 329—INTEREST ON DEPOSITS

Percentage Limitation on Time Deposits of $1,000 or More With Maturities of 4 Years or More

1. Effective August 1, 1973, the Board of Directors of the Federal Deposit Insurance Corporation amended §§ 329.6 and 329.7 of the FDIC's rules and regulations (12 CFR 329.6 and 329.7) so as to limit the total amount of so-called "ceiling-free" time deposits in any one insured nonmember bank (including insured nonmember mutual savings banks) to 5 percent of the bank's total domestic time and savings deposits. A "ceiling-free" time deposit is one for which there is no prescribed maximum interest rate. It must be a deposit of at least $1,000 which has a maturity of 4 years or more.

The amendments establishing a 5 percent limitation on "ceiling-free" time deposits in insured nonmember banks were published in the FEDERAL REGISTER on August 1, 1973 (38 FR 20442). The amendments were subsequently modified to permit certain conversions of existing time deposits to "ceiling-free" deposits without regard to the 5 percent limitation. These modifications took effect on August 17, 1973, and were published in the FEDERAL REGISTER on August 22, 1973 (38 FR 22546).

The Board of Directors has determined that it is necessary to further modify the 5 percent limitation on "ceiling-free" time deposits in insured nonmember mutual savings banks. The Board has therefore amended section 329.7 of the FDIC's rules and regulations to permit an insured nonmember mutual savings bank to issue a "ceiling-free" time deposit within 10 days after the first maturity date of an existing time deposit, without regard to the 5 percent limitation, so long as the total amount of the bank's "ceiling-free" time deposits does not exceed 10 percent of its total time and savings deposits.

This authorization takes effect on September 10, 1973, and is limited to those time deposits which were in the same bank on the effective date. However, an insured nonmember mutual savings bank may transfer such matured time deposits to "ceiling-free" deposits only until the total amount of its "ceiling-free" time deposits reaches 10 percent of its total time and savings deposits.

The amendment is based, in part, on the need to maintain competitive parity between insured nonmember mutual savings banks and federally-insured savings and loan associations. For this reason it is not being extended to insured nonmember commercial banks at this time.

2. Section 329.7 is amended by adding thereto a new footnote 14b to read as follows:

§ 329.7 Maximum rate of interest or dividends payable on deposits by insured nonmember mutual savings banks.[14]

* * * * *

(b) *Maximum rates payable.*

* * * * *

(4) *Time deposits of $1,000 or more with maturities of 4 years or more.*—There is no maximum rate of interest presently prescribed on any time deposit of $1,000 or more with a maturity of 4 years or more: *Provided, however,* That the total amount of such deposits in an insured nonmember mutual savings bank at the time the deposit is made does not exceed 5 percent of its total time and

savings deposits subject to this Part 329, or $500,000, whichever is greater. With respect to any such deposit that is received on or after August 1, 1973, during any period when the outstanding amount of all such deposits is at or above the 5 percent level, or $500,000, whichever is greater, the bank shall not pay interest thereon at a rate in excess of 6¾ percent per annum.[16a] [16b]

* * * * *

(Sec. 9, 18(g); 64 Stat. 881–82, Pub. L. No. 93–100, § 1 (August 16, 1973); 12 U.S.C. 1819, 1828(g).)

3. The requirements of sections 553 (b) and (d) of Title 5, United States Code, and §§ 302.1, 302.2, and 302.5 of the rules and regulations of the Federal Deposit Insurance Corporation, with respect to notice, public participation, and deferred effective date were not followed in connection with this amendment because the Board of Directors found that notice and public procedure thereon would be unnecessary and contrary to the public interest and because the amendment relieves an existing restriction.

4. *Effective date.*—This amendment is effective September 10, 1973.

By order of the Board of Directors, September 7, 1973.

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

[FR Doc.73-19485 Filed 9-12-73;8:45 am]

CHAPTER V—FEDERAL HOME LOAN BANK BOARD

SUBCHAPTER B—FEDERAL HOME LOAN BANK SYSTEM

[No. 73-1301]

PART 526—LIMITATIONS ON RATE OF RETURN

Certificate Accounts of $1,000 or More

SEPTEMBER 7, 1973.

Paragraph (a)(5)(i) of § 526.5 of the Regulations for the Federal Home Loan Bank System (12 CFR 526.5) provides that no maximum rate of return is prescribed for any certificate account of $1,000 or more having a fixed or minimum term or qualifying period of not less than 4 years. Paragraph (a)(5)(ii) of said § 526.5 limits to 5 percent of total savings accounts the amount of such certificate accounts on which a member institution may pay a return at a rate in excess of 6.75 percent per annum.

The Federal Home Loan Bank Board considers it advisable to permit an additional 5 percent of savings to be used for 4 years, $1,000 certificate accounts which are created by transfers at maturity, or within 10 days thereafter, from certificate accounts in existence on September 7, 1973. This additional 5 percent is intended to provide limited relief for member institutions which have exhausted the existing 5 percent limitation. Without this additional 5 percent, those member institutions may suffer withdrawals due to being unable to offer 4 year, $1,000 certificate accounts paying more than 6.75 percent to customers whose certificate accounts are in existence on September 7, 1973, and are coming up for renewal.

In order to accomplish this, a new subdivision (iii) is added to § 526.5(a)(5). Under this new subdivision (iii), for example, if a customer with a $5,000, 2 year certificate account maturing on October 31, 1973, transfers that $5,000 to a 4 year, $1,000 certificate account paying more than 6.75 percent, the member institution may include the $5,000 in the existing 5 percent limitation of subdivision (ii) or include it within the 5 percent limitation of new subdivision (iii).

Accordingly, the Board hereby amends said § 526.5 by revising paragraph (a)(5) thereof to read as set forth below, effective September 7, 1973.

Since affording notice and public procedure on the above amendment would delay it from becoming effective for a period of time and since it is in the public interest that such amendment becomes effective as soon as possible, the Board hereby finds that notice and public procedure thereon are contrary to the public interest under the provisions of 12 CFR 508.11 and 5 U.S.C. 553(b); and the Board hereby finds that publication of such amendment for the 30-day period specified in 12 CFR 508.14 and 5 U.S.C. 553(d) prior to the effective date thereof is unnecessary since it relieves restrictions; and the Board hereby provides that such amendment shall become effective as hereinbefore set forth.

§ 526.5 Maximum rates of return payable on certificate accounts of less than $100,000.

(a) *Maximum rates.* * * *

(5) *No prescribed maximum rate.*—(i) Subject to the percentage limitations contained in paragraph (a)(5)(ii) and (iii) of this section and except as is otherwise provided in this section or § 526.5–1, no maximum rate of return is prescribed on any certificate account of $1,000 or more having a fixed or minimum term or qualifying period of not less than 4 years.

(ii) Except as provided in paragraph (a)(5)(iii) of this section, no member institution may pay a return at a rate in excess of 6.75 percent per annum on a certificate account of $1,000 or more (but less than $100,000) if, as a result of the issuance of such certificate account, the total amount of all such certificate accounts then outstanding, on which a return is being paid at a rate in excess of 6.75 percent per annum, would exceed 5 percent of the institution's total savings accounts outstanding at the end of its most recent distribution period for regular accounts.

(iii) Certificate accounts of $1,000 or more (but less than $100,000) (*a*) on which a member institution pays a return at a rate in excess of 6.75 percent per annum, and (*b*) which have been created by a transfer of funds from certificate accounts of the member institution in existence on September 7, 1973 (such transfer to take place at or within 10 days after the end of the first fiscal or minimum term or qualifying period of such certificate accounts occurring on or after such date), may be included in the 5 percent of total savings accounts limitation of paragraph (a)(5)(ii) of this section or, to the extent not so included in such limitation, may be issued in a total amount not in excess of 5 percent of the institution's total savings accounts outstanding at the end of its most recent distribution period for regular accounts in addition to the 5 percent of total savings accounts limitation of paragraph (a)(5)(ii) of this section.

* * * * *

(Sec. 5B, 47 Stat. 727, as added by sec. 4, 80 Stat. 824, as amended by Public Law 91–151, sec. 2(b), 83 Stat. 371; sec. 17, 47 Stat. 736, as amended; 12 U.S.C. 1425b, 1437. Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–48 Comp., p. 1071.)

By the Federal Home Loan Bank Board.

[SEAL] EUGENE M. HERRIN,
Assistant Secretary.

[FR Doc.73-19495 Filed 9-12-73;8:45 am]

Title 14—Aeronautics and Space

CHAPTER I—FEDERAL AVIATION ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Airspace Docket No. 73-NW-08]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

Alteration of Transition Area; Correction

On August 23, 1973, Federal Register Document 73-17835 was published in the FEDERAL REGISTER (38 FR 22622) adopting an amendment to Part 71 of the Federal Aviation Regulations that amended the description of the Medford, Oreg., Transition Area.

[16a] * * *

[16b] Notwithstanding the 5 percent limitation established by this subparagraph (b)(4), an insured nonmember mutual savings bank may accept any time deposit of $1,000 or more with a maturity of 4 years or more without regard to the interest rate paid thereon if the deposit consists of funds that were in a time deposit in the same bank on September 10, 1973, and if such funds are transferred to a time deposit with a maturity of 4 years or more within 10 days after the first maturity date on which the prior time deposit could be paid: *Provided, however,* That no transfer may be made pursuant to this footnote during any period when the total amount of the bank's time deposits with a maturity of 4 years or more which bear interest at a rate in excess of 6¾ percent per annum exceeds 10 percent of its total time and savings deposits subject to this Part 329, or $500,000, whichever is greater.

Subsequent to the issuance of the document, a review disclosed that the airway designation "V–27E" was used in defining a boundary of the airspace extending upward from 1,200' above the surface, southeast of Medford. The correct airway designation should be "V–23E." Therefore, action is taken herein to correct this error.

Since this change is editorial in nature and imposes no additional burden on any person, notice and public procedure hereon is unnecessary.

In consideration of the foregoing, effective on September 13, 1973, Federal Register Document 73–17835 (38 FR 22622) is corrected as hereinafter set forth.

In § 71.181, line 22 of the text, delete "* * * V–27E * * *" and substitute "* * * V–23E * * *" therefor.

Issued in Seattle, Washington, on September 4, 1973.

C. B. WALK, Jr.,
Director, Northwest Region.

[FR Doc.73–19431 Filed 9–12–73;8:45 am]

Title 16—Commercial Practices

CHAPTER I—FEDERAL TRADE COMMISSION

[Docket C–2433]

PART 13—PROHIBITED TRADE PRACTICES

Argus, Inc.

Subpart—Advertising falsely or misleading. § 13.140 *Old, reclaimed, or* reused product being new; Subpart—Failing to maintain records: § 13.1051 *Failing to maintain records;* 13.1051–10 Accurate; Subpart—Furnishing means and instrumentalities of misrepresentation or deception: § 13.1057 *Packaging deceptively;* Subpart—Misrepresenting oneself and goods—Goods: § 13.1695 *Old, secondhand, reclaimed, or reconstructed as new;* Subpart—Neglecting, unfairly or deceptively, to make material disclosure: § 13.1880 *Old, used, or reclaimed as unused or new.*

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45.) [Cease and desist order, Argus, Incorporated, Ann Arbor, Michigan, Docket C–2433, August 17, 1973.]

In the matter of Argus, Incorporated, a Corporation

Consent order requiring an Ann Arbor, Michigan, manufacturer, seller, and distributor of photographic equipment, among other things to cease failing to disclose to consumers that certain equipment is used rather than new; failing to maintain accurate records; and furnishing new packaging materials for utilization with used equipment.

The order to cease and desist, including further order requiring report of compliance therewith, is as set forth below.

In this order, the following definitions shall be applicable:

(i) *Photographic equipment.*—Photographic equipment shall mean still and movie picture cameras and projectors including attachments thereto, which are designed for and customarily sold for general amateur photographic purposes.

(ii) *Used photographic equipment.*—Photographic equipment shall be considered used when the photographic equipment has been utilized for general demonstration purposes or when it has been sold and delivered to an ultimate consumer unless respondent can show that the product was not used for the purposes for which it was intended.

(iii) *New display boxes.*—New display boxes shall mean any container or wrapping in which photographic equipment other than used photographic equipment is packaged for use in the delivery or display of such equipment to retail purchasers or prospective retail purchasers but does not include the outer shipping container, packing materials and instruction booklets.

(iv) *New warranty cards.*—New warranty cards shall mean any document customarily accompanying the retail sale of photographic equipment other than used photographic equipment evidencing or expressing any or all of the terms and conditions of the manufacturer's or distributor's warranty or guarantee.

(v) *New packaging materials.*—New packaging materials shall mean new display boxes and new warranty cards.

It is ordered, That respondent Argus Incorporated, a corporation, and its officers, successors or assigns and respondent's agents and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, or distribution of photographic equipment in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Failing, clearly and conspicuously to disclose, in connection with the sale of used photographic equipment, (a) in all advertising, sales, promotional literature and invoices concerning such used photographic equipment, (b) on the display box in which such used photographic equipment is packaged, (c) on the used photographic equipment with sufficient permanency as likely to remain thereon until sale to the ultimate consumer, the fact that such product has been previously used.

2. Representing, directly or by implication, that used photographic equipment is new or misrepresenting in any manner the nature, extent or degree of use of any photographic equipment offered for sale, sold or distributed by or on behalf of respondent.

3. Failing to segregate used photographic equipment inventory maintained by respondent from other photographic equipment inventory maintained by respondent.

4. Failing to maintain records which will show the manner in which respondent has complied with paragraph 3, above, consisting of: (a) any communications acquired by respondent in connection with returned photographic equipment, other than used photographic equipment, (b) all records prepared in connection with processing returned photographic equipment, and (c) such records as will reveal the disposition of returned photographic equipment; provided that, nothing contained in this order shall require respondent to identify its photographic equipment including used photographic equipment by individual serial numbers.

5. Supplying new packaging materials to independent warranty shops which customarily do repair or service work on photographic equipment distributed by respondent or to non-affiliated entities not engaged in the wholesale or retail distribution of photographic equipment.

6. Supplying new packaging materials to its customers who resell such equipment at wholesale or retail; provided that respondent may supply to such customers reasonable quantities of new packaging materials for display purposes or to replace destroyed, tarnished or damaged packaging materials upon receiving from such customers a signed statement indicating that such materials will not be utilized with used photographic equipment as that term is defined herein.

It is further ordered, That:

(a) As a condition precedent to repairing, refurbishing, repackaging or replacing photographic equipment other than used photographic equipment returned to respondent, respondent shall require any person, firm or corporation other than an ultimate consumer or retail purchaser who returns such product to provide a signed statement which will indicate that the returned photographic equipment is not used photographic equipment as that term is defined herein unless such product is sealed in such a manner as to preclude its use without breaking such seal and such seal is intact or unless the display box or carton in which such product is packaged is sealed and such seal is intact.

(b) Respondent shall maintain copies of statements received under the provisions of the immediately preceding subparagraph and Paragraph 6, above, for a period of at least three (3) years and respondent shall maintain records sufficient to show compliance with Paragraphs 3 and 4, above, for a period of three (3) years.

(c) Irrespective of the information received pursuant to sub-paragraph (a) above, if respondent has reason to believe from a physical inspection of the photographic equipment or other documentation accompanying the returned product that it has been used as that term is herein defined, it shall be treated as used photographic equipment pursuant to Paragraphs 1, 3, and 4.

It is further ordered, That respondent herein shall notify the Commission at least thirty days prior to any proposed change in the structure of the corporate respondent, such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other

change in the respective corporation which may effect compliance obligations arising out of this Order.

It is further ordered, That respondent shall, within sixty (60) days after service upon it of this Order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with this Order.

It is further ordered, That respondent shall deliver by first class mail, postage prepaid, a copy of this Order to each of its customers who resell photographic equipment at wholesale and/or retail.

It is further ordered, That the respondent shall forthwith distribute a copy of this Order to each of its operating divisions.

Issued August 17, 1973.

By the Commission.

[SEAL] CHARLES A. TOBIN, *Secretary.*

[FR Doc.73-19436 Filed 9-12-73;8:45 am]

[Docket C-2430]

PART 13—PROHIBITED TRADE PRACTICES

Postage Stamp Service Bureau, Inc., and Carlton Lee Struble

Subpart—Advertising falsely or misleadingly: § 13.10 Advertising falsely or misleadingly; § 13.15 *Business status, advantages, or connections;* 13.15–80 Government connection; § 13.50 *Dealer or seller assistance;* § 13.55 *Demand, business, or other opportunities;* § 13.60 *Earnings and profits;* § 13.155 *Prices;* 13.155–5 *Additional charges unmentioned.* Subpart—Delaying or withholding corrections, adjustments or action owed: § 13.675 *Delaying or withholding corrections, adjustments, or action owed;* § 13.677 *Delaying or failing to deliver goods.* Subpart—Misrepresenting oneself and goods—Business status, advantages, or connections: § 13.1425 *Government connection;*—Goods: § 13.1608 *Dealer or seller assistance;* § 13.1610 *Demand for or business opportunities;* § 13.1615 *Earnings and profits;*—Prices: § 13.1778 *Additional costs unmentioned;* Subpart—Neglecting, unfairly or deceptively, to make material disclosure: § 13.1855 *Identity;* § 13.1892 *Sales contract right-to-cancel provision;* §13.1895 *Scientific or other relevant facts.*

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45.) [Cease and desist order, Postage Stamp Service Bureau, Inc., et al., Las Vegas, Nevada, Docket C-2430, August 14, 1973.]

In the Matter of Postage Stamp Service Bureau, Inc., a Corporation, and Carlton Lee Struble, Individually and as an Officer of Said Corporation

Consent order requiring a Las Vegas, Nevada, seller and distributor of postage stamp vending machines, among other things to cease misrepresenting the earnings and profits derived from a distributorship or franchise; misrepresenting the opportunities in the product or business; misrepresenting dealer assistance; and misrepresenting that the firm is affiliated with the U.S. Government or U.S. Postal Service. The order further requires respondents to initiate a 10-day, cooling-off period during which purchasers may cancel their contracts and receive full refund of all monies spent.

The order to cease and desist, including further order requiring report of compliance therewith, is as follows:

It is ordered, That respondents, Postage Stamp Service Bureau, Inc., a corporation, its successors and assigns, and its officers, and Carlton Lee Struble, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of vending machines and vending machine supplies or any other products or of distributorships or franchises in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Representing, directly or by implication, that:

1. (a) Persons investing in respondents' products or distributorships will receive any stated amount of income or gross or net profits or other earnings.

(b) Any stated sums of money are past earnings of distributors or purchasers of respondents' products if such sums are not based upon the actual average figures for all distributors not owned or operated by the respondent or an affiliate thereof in operation during the entire preceding twelve month period, and disclosing clearly and conspicuously immediately adjacent to any such representation that "Representations are based on the average earnings or profits of all independent distributors in operation during the past year. These figures should not be considered as accurate representations of potential earnings or profits of any specific distributor."

(c) Any stated sums of money are past earnings without (1) identifying such earnings as "earnings before expenses" or "earnings after expenses" and (2) disclosing the expenses incurred by those distributors in producing such earnings, such expenses to include, but not be limited to, telephone, automobile and freight charges on supplies.

(d) Persons investing in respondents' distributorships or products will make any stated number of sales.

(e) Any stated number of sales is the past sales of distributors or purchasers of respondents' products if such number is not based upon the actual average figures for all distributors not owned or operated by the respondent or an affiliate thereof in operation during the entire preceding twelve month period, and disclosing clearly and conspicuously immediately adjacent to any such representation that "Representations are based on the average sales of all independent distributors in operation during the past year. These figures should not be considered as accurate representations of potential sales of any specific distributor."

2. Respondents, their agents, representatives, or employees will obtain satisfactory or profitable locations for the machines purchased from them: *Provided, however*, That nothing herein shall be construed to prohibit respondents from truthfully and non-deceptively representing that they have obtained locations or assisted in obtaining locations if respondents clearly and conspicuously disclose, in immediate conjunction therewith, the average net or gross earnings realized by all purchasers from machines in locations obtained by respondents or through their assistance.

3. Respondents will deliver their merchandise within a specific period of time, or on a specific date, unless in each instance such delivery is made as represented by respondents, or misrepresenting in any other manner the time within which respondents' merchandise will be delivered; or representing that respondents assist in the installation of vending equipment unless respondents in each instance furnish such assistance at the time of the delivery.

4. Respondents make a survey or an investigation of neighborhoods for suitable locations for vending machines for their customers unless the nature and extent of such survey or investigation is clearly and expressly revealed and the respondents can establish that such survey or investigation actually has been made.

B. Failing to furnish any prospective distributor with all of the following information, in a clear, permanent, and straight-forward form, at the time when contact is first established between such prospective distributor and the respondent or its representative:

1. The official name(s) and address(es) of the corporate respondent, the parent firm or holding company of the respondent, if any; all affiliated companies that will engage in business with the distributor.

2. The business experience of the respondents, including the length of time the respondents have conducted a business of the type to be operated by the distributor; have granted distributorships for such business; and have granted distributorships in other lines of business.

3. A list of the names and addresses of the ten persons who purchased a distributorship, for products or product lines similar to, or the same as, those being offered by respondents to any prospective distributor, and are situated in the same geographic area.

4. A statement of the conditions and terms under which the respondents allow the distributor to sell, lease, assign, or otherwise transfer his distributorships, or any interest therein.

5. A statement that respondents are not affiliated in any way with the United States Government or the United States Postal Service.

6. A statement of the number of persons who have signed distributor agreements for whom locations have not yet

been agreed upon by both the respondents and the distributor.

7. A statement of the average length of time between the signing of a distributor agreement and the location of the vending machines.

8. A statement of the average length of service of personnel who are responsible for assisting the distributor at his location, and the average number of hours such personnel spend during the past year with each distributor that was in business for less than one year.

All of the foregoing material is to be contained in a single package, is to be made available to the Commission or its staff upon demand, and is to carry a distinctive and conspicuous cover sheet with the following information (and no other) imprinted thereon in bold face type of not less than 10 point size:

INFORMATION FOR PROSPECTIVE DISTRIBUTORS REQUIRED BY FEDERAL TRADE COMMISSION

This package of information is provided for your own protection. It is in your best interest to study it carefully before making any commitment.

If you do sign a contract, you may cancel it, and obtain a full refund of any money paid, for any reason within ten business days after signing. Details appear on the contract itself.

The information contained herein has not been reviewed or approved by the Federal Trade Commission, but any misrepresentation constitutes a violation of Federal law. If you feel you have been misled, you should contact the Federal Trade Commission in Washington, or the Federal Trade Commission Regional Office nearest you.

C. Making any claim in any advertising or promotional material for which the respondents do not have in their possession valid substantiating data, which data shall be made available to prospective distributors or the Commission or its staff upon demand.

D. Failing to include immediately above and on the same page as the distributor's signature line of any contract establishing or confirming a distributorship agreement, the following statement in bold face print at least 50 percent larger than any other print in the body of such contract, or in bold face print of a contrasting color:

NOTICE: YOU ARE ENTITLED TO CERTAIN IMPORTANT INFORMATION CONCERNING THIS TRANSACTION, ENTITLED "INFORMATION FOR PROSPECTIVE DISTRIBUTORS REQUIRED BY FEDERAL TRADE COMMISSION." IT IS IN YOUR BEST INTEREST TO DEMAND AND STUDY SUCH INFORMATION. *YOU MAY CANCEL THIS CONTRACT FOR ANY REASON WITHIN TEN BUSINESS DAYS AFTER YOU SIGN IT.* If you do choose to cancel, you will be entitled to receive full refund of any money paid within ten business days after Postage Stamp Service Bureau, Inc. receives notice of your cancellation. You may use any reasonable method to notify Postage Stamp Service Bureau, Inc., of your cancellation within the grace period. For your own protection you may wish to use certified mail with return receipt requested, or a telegram, either of which should be sent to the address below. [Respondent will insert here the address and telephone number to which such notices should be sent.]

E. Failing to cancel any contract for which a notice of cancellation was sent by any reasonable means within ten business days after the contract's execution, or to fail to refund any money paid by distributor within ten business days after the date of receipt of such notice of cancellation.

As used in this Order, the following definitions shall apply:

1. "Prospective distributor" means any person who approaches, or is approached by, respondents or their agent or representative for the purpose of investigating a distributorship between such person and respondents;

2. "Time when contact is first established" means the earlier of the time when

(a) A direct personal meeting first occurs between respondents or their agent or representative and a prospective distributor, or

(b) Any document or promotional literature is distributed to a prospective distributor.

It is further ordered, That respondents

Inform orally all prospective customers and provide in writing in all contracts that the contract is not final and binding until respondents have completely performed their obligations thereunder by placing the vending machines in locations satisfactory to the customer and said customer has thereafter signed a statement indicating his satisfaction.

Refund immediately all monies to (1) customers who have requested contract cancellation in writing within ten days from the execution thereof, (2) customers who have refused to sign statements indicating satisfaction with respondents' placement of the machines, and (3) customers showing that respondents' contract, solicitations or performance were attended by or involved violations of any of the provisions of this order.

It is further ordered, That respondents maintain files containing all inquiries or complaints from any source relating to acts or practices prohibited by this Order, for a period of two years after their receipt, and that such files be made available for examination by a duly authorized agent of the Federal Trade Commission during the regular hours of the respondents' business for inspection and copying.

It is further ordered, That the corporate respondent notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of successor corporations, the creation or dissolution of subsidiaries or corporate affiliates or any other change in the corporation which may affect compliance obligations arising out of this Order.

It is further ordered, That respondents deliver a copy of this Order to Cease and Desist to all present and future employees, agents and representatives engaged in the offering for sale or sale of respondents' distributorships or products or in any aspect of preparation, creation or placing of advertising and that respondents secure a signed statement acknowledging receipt of said Order form each such person.

It is further ordered, That the individual respondent named herein promptly notify the Commission of the discontinuance of his present business or employment. Such notice shall include respondent's current business address and a statement as to the nature of the business or employment in which he is engaged as well as a description of his duties and responsibilities.

It is further ordered, That the corporate respondent distribute a copy of this Order to each of its operating divisions or departments.

It is further ordered, That the respondents herein shall, within sixty (60) days after service upon them of this Order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this Order.

By the Commission.

[SEAL] CHARLES A. TOBIN, *Secretary.*

AUGUST 14, 1973.

[FR Doc.73-19435 Filed 9-12-73;8:45 am]

[Docket C-2431]

PART 13—PROHIBITED TRADE PRACTICES

Uniroyal Merchandising Company, Inc.

Subpart—Advertising falsely or misleadingly: § 13.70 *Fictitious or misleading guarantees;* Subpart—Misrepresenting oneself and goods—Goods: § 13.1647 *Guarantees;* Subpart—Offering unfair, improper and deceptive inducements to purchase or deal: § 13.1980 *Guarantee, in general.*

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45.) [Cease and desist order, Uniroyal Merchandising Company, Inc., Houston, Texas, Docket C-2431, August 16, 1973.]

In the matter of Uniroyal Merchandising Company, Inc., a Corporation

Consent order requiring a Houston, Texas, wholly owned, subsidiary of Uniroyal, Inc., engaged in the sale and distribution of mufflers, automotive fan belts, and other products, among other things to cease misrepresenting the nature and extent of its guarantees.

The order to cease and desist, including further order requiring report of compliance therewith, is as follows:

It is ordered, That respondent Uniroyal Merchandising Company, Inc., a corporation, and its officers, agents, representatives, employees, successors and assigns, dierctly or through any corporate or other device, in connection with the sale, offering for sale, or distribution of mufflers, automotive fan belts, or other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Representing by any means, directly or by implication with respect to those products manufactured by respondent, and in any advertising of products not manufactured by respondent, that such products are guaranteed unless the nature, extent and duration of the guarantee, the identity of the guarantor and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed; and unless respondent promptly and fully performs all of its obligations and requirements, directly or impliedly represented, under the terms of each such guarantee.

It is further ordered, That respondent notify the Commission at least 30 days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

It is further ordered, That the respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions.

It is further ordered, That the respondent herein shall, within sixty (60) days after service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with this order.

Issued August 16, 1973.

By the Commission.

[SEAL] CHARLES A. TOBIN,
Secretary.

[FR Doc.73-19437 Filed 9-12-73;8:45 am]

Title 21—Food and Drugs

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

SUBCHAPTER B—FOOD AND FOOD PRODUCTS

PART 121—FOOD ADDITIVES

Copper Triethanolamine

A petition (FAP 3H5027) was filed by Applied Biochemists, Inc., P.O. Box 25, Mequon, Wis. 53092, in accordance with provisions of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 348), proposing establishment of a food additive tolerance (21 CFR Part 121) for residues of copper in potable water at 1 part per million resulting from the use of copper triethanolamine complex to control aquatic plants in reservoirs, lakes, ponds, irrigation ditches, and other potential sources of potable water. (For a related document, see this issue of the FEDERAL REGISTER, page 25439.)

The Reorganization Plan No. 3 of 1970, published in the FEDERAL REGISTER of October 6, 1970 (35 FR 15623), transferred (effective December 2, 1970) to the Administrator of the Environmental Protection Agency the functions vested in the Secretary of Health, Education, and Welfare for establishing tolerances for pesticide chemicals under sections 406, 408, and 409 of the Federal Food, Drug, and Cosmetic Act, as amended (21 U.S.C. 346, 346a, and 348).

Having evaluated the data in the petition and other relevant material, it is concluded that the tolerance should be established.

Therefore, pursuant to provisions of the act (sec. 409(c)(1), (4), 72 Stat. 1787; 21 U.S.C. 348(c)(1), (4)), the authority transferred to the Administrator of the Environmental Protection Agency (35 F.R. 15623), and the authority delegated by the Administrator to the Deputy Assistant Administrator for Pesticide Programs (36 FR 9038), § 121.1241 is revised to read as follows:

§ 121.1241 Copper.

A tolerance of 1 part per million is established in potable water for residues of copper resulting from the use of the algicides or herbicides basic copper carbonate (malachite), copper sulfate, and copper triethanolamine to control aquatic plants in reservoirs, lakes, ponds, irrigation ditches, and other potential sources of potable water.

Any person who will be adversely affected by the foregoing order may at any time on or before October 15, 1973, file with the Hearing Clerk, Environmental Protection Agency, Room 1019E, 4th and M Streets SW., Waterside Mall, Washington, D.C. 20460, written objections thereto in quintuplicate. Objections shall show wherein the person filing will be adversely affected by the order and specify with particularity the provisions of the order deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum or brief in support thereof.

Effective date.—This order shall become effective on September 13, 1973.

(Sec. 409(c)(1), (4), 72 Stat. 1786 (21 U.S.C. 348(c)(1), (4)).)

Dated September 7, 1973.

HENRY J. KORP,
Deputy Assistant Administrator for Pesticide Programs.

[FR Doc.73-19456 Filed 9-12-73;8:45 am]

PART 144—ANTIBIOTIC DRUGS; EXEMPTION FROM LABELING AND CERTIFICATION REQUIREMENTS

Nithiazide; Revocation

Correction

In FR Doc. 73-16341 appearing on page 21398 in the issue of Wednesday, August 8, 1973, the effective date in the last paragraph before the authority citation reading "August 8, 1973", should read "September 17, 1973".

Title 32A—National Defense, Appendix

CHAPTER X—OFFICE OF OIL AND GAS, DEPARTMENT OF THE INTERIOR

[Oil Import Reg. 1 (revision 5), Amdt. 60]

REG. 1—OIL IMPORT REGULATION

Miscellaneous Amendments

Presidential Proclamation 4210 provides that any allocation periods expiring prior to May 1, 1974, be extended to April 30, 1974. Thereafter, allocations will be for twelve month periods beginning May 1 of each year. Section 3 of Oil Import Regulation 1 (Revision 5), as amended is amended in its entirety to (1) extend to April 30, 1974, all existing allocation periods except those for sections 9A and 11A, (2) provide for supplemental allocations for the extended portion of the allocation periods, (3) advance the initial allocation period pursuant to section 9B to May 1, 1974, instead of July 1, 1974, and (4) provide that effective May 1, 1974, all allocations except those made pursuant to sections 9A and 11A will be for periods of twelve months beginning May 1 of each year.

Licenses for the supplemental allocations will be issued as soon as practicable after publication of this amendment 60 in the FEDERAL REGISTER. All licenses except those pursuant to sections 9A and 11A issued after publication of this amendment in the FEDERAL REGISTER but prior to April 30, 1974, will expire April 30, 1974. Licenses issued prior to publication of this amendment 60 in the FEDERAL REGISTER shall expire on the expiration date shown on the license.

Presidential Proclamation 4227 expanded the conditions under which refunds of license fees can be made by the Director. These changes were incorporated into section 32 as a part of Amendment 59. Inadvertently, refunds of license fees paid for finished products were omitted. Paragraph (g) of section 32 of Oil Import Regulation 1 (Revision 5), as amended, is amended to provide for refund of license fees paid for finished products.

Dated September 7, 1973.

STEPHEN A. WAKEFIELD,
Assistant Secretary of the Interior.

Section 3 of Oil Import Regulation 1 (Revision 5), as amended, is amended in its entirety to read as follows:

SEC. 3—Allocation periods.

(a) Except for allocations made pursuant to sections 9A and 11A all allocation periods beginning on or after January 1, 1973, shall be extended to expire April 30, 1974.

(b) Supplemental fee exempt allocations will be made by the Director for the extended portion of the allocation period for which an allocation period has not been made. Such supplemental allocations shall be computed so as to provide allocations for the extended portion of the allocation period at the same daily average as the base allocations.

(c) Effective May 1, 1974, the allocation periods for all allocations except allocations issued pursuant to sections 9A and 11A will be made for periods of twelve months beginning May 1 of each year.

(d) Allocation periods for allocations made pursuant to sections 9A and 11A will be as provided for in those sections.

(e) Notwithstanding the provisions of paragraph (1) of section 9B the initial allocation period pursuant to section 9B will be for a period of twelve months beginning May 1, 1974. Subsequent allocations will be made for periods of twelve months beginning May 1 of each year.

Sec. 32 [Amended]

The first sentence of paragraph (g) of section 32 of Oil Import Regulation 1 (Revision 5) is amended to read as follows:

(g) Refund of license fees paid for the importation of crude, unfinished oils or finished products shall be made by the Director, wholly or in part:

[FR Doc.73-19601 Filed 9-11-73;8:45 am]

Title 33—Navigation and Navigable Waters

CHAPTER I—COAST GUARD, DEPARTMENT OF TRANSPORTATION

[CGD 73-204R]

PART 117—DRAWBRIDGE OPERATION REGULATIONS

Gulf Intracoastal Waterway, Florida

This amendment adds regulations for the Bailey bridge, mile 171.9, east of Harvey Canal Lock that has been temporarily installed to replace a bascule bridge span that was seriously disabled when struck by a tow and barges. A new span is presently being built and is expected to be installed by March 1, 1974. These regulations will become effective on August 15, 1973 and will be rescinded on March 1, 1974.

This rule is issued without notice of proposed rulemaking. The Coast Guard has found that good cause exists for taking this action on the basis that it would be contrary to the public interest to delay this work.

Accordingly, Part 117 of Title 33 of the Code of Federal Regulations is amended by adding a new § 117.467 immediately after 117.466 to read as follows:

§ 117.467 Bailey bridge, GIWW, mile 171.9, east of Harvey Canal Lock, Fla.

(a) *From August 15, 1973, through March 1, 1974.*—(1) The draw may be closed to navigation daily from 6 a.m. to 9 a.m., 11 a.m. to 1 p.m., 3 p.m. to 6 p.m., and 8 p.m. to 11 p.m.

(2) The draw shall be fully open to navigation from 9 a.m. to 11 a.m., 1 p.m. to 3 p.m., 6 p.m. to 8 p.m., and 11 p.m. to 6 a.m.

(Sec. 5, 28 Stat. 362, as amended, sec. 6(g)(2), 80 Stat. 937; 33 U.S.C. 499, 49 U.S.C. 1655(g)(2) 46 CFR 1.46(c)(5), 33 CFR 1.05-1(c)(4).)

Effective date.—This revision shall be effective from August 15, 1973 through March 1, 1974.

Dated September 10, 1973.

W. M. BENKERT,
Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Environment and Systems.

[FR Doc.73-19432 Filed 9-12-73;8:45 am]

[CGD 73-95R]

PART 117—DRAWBRIDGE OPERATION REGULATIONS

Columbia and Snake Rivers, Washington

This amendment changes the regulations for the three railroad bridges across the Columbia and Snake Rivers in the vicinity of Pasco, Kennewick, and Burbank, Washington, to authorize the use of radiotelephones in lieu of sound or visual signals. This amendment was circulated as a public notice dated May 4, 1973, by the Commander, Thirteenth Coast Guard District, and was published in the FEDERAL REGISTER as a notice of proposed rulemaking (CGD 73-95P) on May 8, 1973 (38 FR 11472). Seven comments were received. Three had no objection and three supported this change. One had no objection but was investigating this proposal further and no further comment has been received from this source.

Accordingly, Part 117 of Title 33 of the Code of Federal Regulations is amended by revising paragraph (f) of § 117.760 to read as follows:

§ 117.760 Columbia and Snake Rivers in vicinity of Pasco, Wash.; bridges.

* * * * *

(f) A vessel, desiring to pass through any one of the above bridges, under which it cannot pass with the draw closed, except when advance notice is required by paragraph (c) of this section, shall sound the call signal for such bridge as prescribed and shall repeat such signal at intervals until it is answered by the draw tender. These bridges are equipped with FM radiotelephone stations. Sound and visual signals may be omitted when radiotelephone communications have been satisfactorily established between the bridge(s) and an approaching vessel. In case two vessels approaching from opposite directions would meet at or near the bridge, the vessel bound downstream shall be considered as having the right-of-way. When either vessel waits for the passage of the other, the vessel shall again give the call signal for the bridge and receive an acknowledging signal from the draw tender before proceeding It is incumbent upon navigators to make sure that their signals are understood before proceeding through a drawspan, and when approaching bridges, vessels should be kept under control, with a view to stopping, if necessary, before reaching the bridge.

* * * * *

(Sec. 5, 28 Stat. 362, as amended, sec. 6(g)(2), 80 Stat. 937; 33 U.S.C. 499, 49 U.S.C. 1655(g)(2); 49 CFR 1.46(3)(5), 33 CFR 1.05-1(c)(4).)

Effective date.—This revision shall become effective on October 14, 1973.

Dated: September 6, 1973.

W. M. BENKERT,
Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Environment and Systems.

[FR Doc.73-19434 Filed 9-12-73;8:45 am]

Title 35—Panama Canal

CHAPTER I—CANAL ZONE REGULATIONS

SUBCHAPTER A—ORGANIZATION AND ADMINISTRATION

PART 5—PUBLIC LANDS; MILITARY RESERVATIONS

Revision of Boundary of Fort Gulick Army Reservation

The purpose of this amendment is to remove certain lands from the Fort Gulick Army Reservation which have been declared surplus to the needs of the Department of the Army.

Effective September 13, 1973, § 5.28(a) of Title 35, Code of Federal Regulations, is amended to read as follows:

§ 5.28 Fort Gulick Army Reservation.

(a) * * *

PARCEL NO. 3

The area comprising this parcel is situated east of Randolph Road, south of Galeta Road and west of Canal Zone—Republic of Panama boundary and the boundary is more particularly described as follows:

Beginning at monument No. 1, which is a brass plug located in the concrete pavement, on the easterly side of Randolph Road, and northerly from the junction of Galeta Road, the geodetic position of which, referred to the Canal Zone triangulation system is in latitude 9°22' N. plus 4,566.3 feet and longitude 79°52' W. plus 5,664.3 feet from Greenwich. Monument No. 1 is S. 32°39'00" E., 133.1 feet from Precise Bench Mark "C".

Then from said initial point by metes and bounds:

N. 62°40'40" E., 148.2 feet to monument No. 10, which is a 2-inch iron pipe, located on the northerly side of Galeta Road;

S. 14°02'10" E., 50.0 feet, more or less, to an unmarked point called No. 10-A, located on a line parallel to and 30 feet southerly from the centerline of Galeta Road;

In a generally easterly and northerly direction, following a line parallel to and 30 feet southerly from the centerline of Galeta Road and Road R12-E (old 100' Hill Road) to an unmarked point called 81-H, located on longitude 79°51' W. plus 3,607.6 feet and latitude 9°23' N. plus 882.99 feet;

Due east, 75.0 feet, more or less, to monument No. 34, which is a brass plug in concrete;

N. 89°58'00" E., 3,926.6 feet, through monument No. 43, which is a brass plug in concrete monument, to an unmarked point called 43-A, located on the Canal Zone—Republic of Panama boundary line, the distances being 3,531.4 feet and 395.2 feet, successively, from beginning of the course;

S. 00°32'00" W., 747.8 feet, along the Canal Zone-Republic of Panama boundary line, to monument No. 1, which is a 4-inch iron pipe with a cap;

S. 00°32'00" W., 2,260.7 feet, through monument No. 1-1, which is a 1½-inch iron pipe, to monument No. 2, which is a 4-inch iron pipe with a cap, the distances being 816.0 feet and 1,444.7 feet, successively, from beginning of the course;

S. 00°33'00" W., 2,920.3 feet, through monuments Nos. 2-1 and 2-2, which are 1½-inch iron pipes, and monument No. 3, which is a 4-inch iron pipe with a cap, to monument No. 3-1, which is a 2-inch iron pipe, the distances being 496.2 feet, 1,142.3 feet, 835.1 feet, and 446.7 feet, successively, from beginning of the course;

S. 89°52'32" W., 335.8 feet to monument No. 53, which is a 2½-inch iron pipe;

S. 89°58'08" W., 11,164.5 feet to monument No. 81-A, which is a 1¼-inch iron pipe. Monument 81-A is 77.3 feet easterly of the centerline of Randolph Road;

N. 03°34'00" W., 1,947.5 feet, along a line parallel to and 77.3 feet easterly from the centerline of the 30.0-foot-wide pavement of Randolph Road, along the westerly side of a cyclone fence, to monument B-14, which is a 2¼-inch iron pipe.

Then following along a line parallel to and approximately 1.5 feet westerly from the above-mentioned cyclone fence, on the easterly side of Randolph Road, to monument B-16, as follows:

N. 07°45'00" W., 254.4 feet, to monument B-15, which is a 2-inch iron pipe;

N. 12°13'30" W., 849.6 feet, to monument B-16, which is a 2-inch iron pipe;

S. 86°46'30" W., 200.4 feet, crossing Randolph Road, to monument B-17, which is a 2-inch iron pipe;

N. 87°51'45" W., 562.0 feet, to monument B-18, which is a 2-inch iron pipe, located northeasterly from Quarters No. 334;

N. 14°14'00" W., 763.2 feet, more or less, through monument B-19, which is a brass plug in a top of a concrete seawall, to an unmarked point called B-20, on the northerly face of the above-mentioned seawall at the intersection of the mean low waterline of Margarita Bay, the distances being 760.7 feet and 2.5 feet, more or less, successively, from beginning of the course.

Easterly, following the mean low waterline of Margarita Bay, along the northerly side of the above-mentioned concrete seawall to an unmarked point called No. 4, located N. 12°14'20" W., 2 feet, more or less, from monument No. 3, which is a brass plug in the center of the above-mentioned seawall:

S. 12°14'20" E., 2 feet, more or less, to the above-mentioned monument No. 3, the geodetic position of which is in latitude 9°22'N. plus 4,810.6 feet and longitude 79°52' W., plus 5,797.7 feet;

S. 12°14'20" E., 249.9 feet, along the easterly side of a cyclone fence and along the westerly side of a concrete drainage ditch to monument No. 2, which is a brass plug located in the lip of the above-mentioned drainage ditch;

East, 80.4 feet, crossing Randolph Road, to monument No. 1 the point of beginning.

The directions of the lines refer to the true meridian.

All geographic positions are referred to the Panama-Colon datum of the Canal Zone Triangulation System.

The reservation contains a total area of 3,302.3 acres, more or less (Parcel No. 1 at Gulick—mainland 1,755.8 acres and islands 85.3 acres, more or less; Parcel No. 2 at Coco Solo—area above mean low water 60.75 acres, more or less; Parcel No. 3 is 1,400.4 acres, more or less) and is as shown on Canal Zone Government Drawing No. M 6118-44, entitled "Map Showing Boundary of Fort Gulick Army Reservation" scale 1:10,000, dated January 20, 1958 (Revision No. 2 dated Feb. 20, 1959), and No. 6121-72 (Revision No. 1 dated January 5, 1973) entitled "Map Showing United States Army and Navy Reservations, Fort Gulick, Fort Randolph and Coco Solo, Canal Zone" dated September 15, 1969, scale 1:10,000. Both maps are on file in the Office of the Governor of the Canal Zone, Balboa Heights, C.Z.

(2 C.Z.C. 31, 76A Stat. 7, 35 CFR 3.3(c).)

DAVID S. PARKER,
Governor of the Canal Zone.

JULY 27, 1973.

Approved:

HOWARD H. CALLAWAY,
Secretary of the Army.

AUGUST 24, 1973.

[FR Doc.73-19447 Filed 9-12-73;8:45 am]

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

SUBCHAPTER D—WATER PROGRAMS

PART 113—LIABILITY LIMITS FOR SMALL ONSHORE STORAGE FACILITIES

Financial Liability of Small Facilities

On May 10, 1973, notice was published in the FEDERAL REGISTER (38 FR 12239) proposing to establish limits on the financial liability of small facilities for the costs of removal of oil incurred by the U.S. Government.

Written comments on the proposed rulemaking were invited and two were received, one each from the States of Michigan and Rhode Island. The points raised in these comments were:

a. The possible detrimental effect imposed upon state oil pollution control programs by limiting financial liability for oil spill removal; and

b. The impropriety of expending public funds for removal of oil spills when costs exceed those specified by the proposed regulation.

With respect to item a. above, it is believed that § 113.6 *Effect on other laws*, adequately protects the rights of state and local governments to have more stringent requirements. The agency concurs with the concepts in item b and in determining whether or not small facilities should be subjected to liability lower than the $8 million specified in sec. 311(f)(2), 33 U.S.C. 1251, et seq. it was found that the costs of cleanup associated with discharges from small onshore storage facilities have not exceeded the limits specified in the regulation. Additionally, the regulation may be amended from time to time as additional cost data or other information become available.

Inasmuch as the comments received do not require modification to the proposed rule published on May 10, 1973, the liability limits and associated size classes are effective upon publication. The new part 113 to Title 40 of the Code of Federal Regulations establishes liability limits for onshore oil storage facilities having a total fixed capacity of 1,000 barrels or less. Section 311(f)(2) of the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251, et seq., authorizes the Administrator to establish reasonable and equitable classifications of those onshore facilities having a total fixed storage capacity of 1,000 barrels or less which he determines because of size, type, and location, do not present a substantial risk of the discharge of oil and hazardous substances in violation of subsection (b)(4) of section 311, and apply with respect to such classifications, differing limits of liability, which may be less than the amount specified in section 311(f)(2). (Section 311(f)(2) provides for a maximum liability of $8 million for onshore facilities.) Inasmuch as sec. 311(f)(2) authorizes the limiting of liability for small onshore oil or hazardous substances storage facilities and additional study will be required before proposed limits pertaining to those facilities storing hazardous substances can be developed, Part 113 will consist of two subparts. The following is designated as Subpart A—Oil Storage Facilities; Subpart B, which may be issued in the future, will pertain to those small onshore facilities that store hazardous substances.

This regulation has been prepared after consultation with the Secretary of Commerce and the Small Business Administration.

Limited data are presently available to evaluate the entire range of liabilities which may be expected. Historical data do show, however, that small facilities of the type described in the proposed regulation do not present as substantial a risk of extensive environmental damage as do larger sized fixed oil storage facilities. Because of the relatively small quantities of oil such facilities have stored at any given time, it would be expected that discharges from these facilities, although violating regulations promulgated pursuant to sec. 311(b)(4) of the Act, would not result in large scale environmental degradation. The classifications and financial liability limits specified are based upon average historical costs of removal and are designed to provide an acceptable level of environmental protection without imposing undue financial requirements on small business enterprises. As additional data on removal costs are accumulated, however, liability limits, size classes or differentials for aboveground as against belowground facilities may be adjusted.

The bases for size classifications, differentials for aboveground as against belowground siting, and dollar values associated thereto, are as follows:

1. The four size classifications contemplated in the proposed regulations are:

Class I—up to 10 barrels capacity.—This size class includes the majority of small commercial and industrial establishments employing standardized welded steel tankage.

Class II—11 to 170 barrels capacity.—This size class includes small apartment buildings, small vehicle fleet operations, and small commercial and industrial establishments.

Class III—171 to 500 barrels capacity.—This size class includes most service stations, marinas, medium sized apartment buildings and some industrial establishments.

Class IV—501 to 1,000 barrels capacity.—This size class includes primarily industrial plants, large hotels and apartment buildings, and large service stations.

2. The relatively higher liability limit proposed for belowground storage facilities is based upon data that indicate a time lapse between the occurrence of a spill and initiation of containment and countermeasure actions. As a consequence of the time lag, spills from belowground facilities tend to be of larger quantity than from comparably sized aboveground facilities and escaped material spreads over a greater area of the receiving water body, complicating removal and mitigation operations.

3. The dollar values for liability limits were derived from data on cost of removing oil spills of various sizes from the navigable waters of the United States. These data were furnished primarily by the regional offices of EPA, with assistance from the U.S. Coast Guard and various cleanup contracting companies.

Dated September 7, 1973.

JOHN QUARLES,
Acting Administrator.

Subpart A—Oil Storage Facilities

Sec.
113.1 Purpose.
113.2 Applicability.
113.3 Definitions.
113.4 Size classes and liability limits.
113.5 Exclusions.
113.6 Effect on other laws.

AUTHORITY: Sec. 311(f)(2), 86 Stat. 867, 33 U.S.C. 1251 (1972).

Subpart A—Oil Storage Facilities

§ 113.1 Purpose.

This subpart establishes size classifications and associated liability limits for small onshore oil storage facilities with fixed capacity of 1,000 barrels or less.

§ 113.2 Applicability.

This subpart applies to all onshore oil storage facilities with fixed capacity of 1,000 barrels or less. When a discharge to the waters of the United States occurs from such facilities and when removal of said discharge is performed by the United States Government pursuant to the provisions of subsection 311(c)(1) of the Act, the liability of the owner or operator and the facility will be limited to the amounts specified in paragraph 113.4.

§ 113.3 Definitions.

As used in this subpart, the following terms shall have the meanings indicated below:

(a) "Aboveground" storage facility means a tank or other container, the bottom of which is on a plane not more than 6 inches below the surrounding surface.

(b) "Act" means the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1151, et seq.

(c) "Barrel" means 42 United States gallons at 60 degrees Fahrenheit.

(d) "Belowground" storage facility means a tank or other container located other than as defined as "Aboveground".

(e) "Discharge" includes, but is not limited to any spilling, leaking, pumping, pouring, emitting, emptying or dumping.

(f) "Onshore Oil Storage Facility" means any facility (excluding motor vehicles and rolling stock) of any kind located in, on, or under, any land within the United States, other than submerged land.

(g) "On-Scene Coordinator" is the single Federal representative designated pursuant to the National Oil and Hazardous Substances Pollution Contingency Plan and identified in approved Regional Oil and Hazardous Substances Pollution Contingency Plans.

(h) "Oil" means oil of any kind or in any form, including but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil.

(i) "Remove" or "removal" means the removal of the oil from the water and shorelines or the taking of such other actions as the Federal On-Scene Coordinator may determine to be necessary to minimize or mitigate damage to the public health or welfare, including but not limited to, fish, shellfish, wildlife, and public and private property, shorelines, and beaches.

Additionally, the terms not otherwise defined herein shall have the meanings assigned them by sec. 311(a) of the Act.

§ 113.4 Size classes and associated liability limits for fixed onshore oil storage facilities, 1,000 barrels or less capacity.

Unless the United States can show that oil was discharged as a result of willful negligence or willful misconduct within the privity and knowledge of the owner or operator, the following limits of liability are established for fixed onshore facilities in the classes specified:

(a) Aboveground storage.

Size class	Capacity (barrels)	Limit (dollars)
I	Up to 10	4,000
II	11-170	60,000
III	171-500	150,000
IV	501-1,000	200,000

(b) Belowground storage.

Size class	Capacity (barrels)	Limit (dollars)
I	Up to 10	5,200
II	11-170	78,000
III	171-500	195,000
IV	501-1,000	260,000

§ 113.5 Exclusions.

This subpart does not apply to:

(a) Those facilities whose average daily oil throughout is more than their fixed oil storage capacity.

(b) Vehicles and rolling stock.

§ 113.6 Effect on other laws.

Nothing herein shall be construed to limit the liability of any facility under State or local law or under any Federal law other than sec. 311 of the Act, nor shall the liability of any facility for any charges or damages under State or local law reduce its liability to the Federal Government under section 311 of the Act, as limited by this subpart.

[FR Doc.73-19488 Filed 9-12-73;8:45 am]

SUBCHAPTER E—PESTICIDE PROGRAMS

PART 180—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

Exemptions From Tolerances; Copper Triethanolamine

A petition (PP 2F1227) was filed by Applied Biochemists, Inc., P.O. Box 25, Mequon, Wis. 53092, in accordance with provisions of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a), proposing establishment of an exemption from the requirement of a tolerance for residues of triethanolamine when used as an inert ingredient in aquatic herbicides applied to water.

Subsequently, the petitioner amended the petition by proposing that the exemption be established for residues of copper resulting from the use of copper triethanolamine as an algicide or herbicide in fish hatcheries, lakes, ponds, and reservoirs. (For a related document, see this issue of the FEDERAL REGISTER, page 25437.)

Based on consideration given data submitted in the petition and other relevant material, it is concluded that:

1. Copper triethanolamine is useful for the purpose for which the exemption is being established.

2. The exemption established by this order will protect the public health.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 408(d)(2), 68 Stat. 512; 21 U.S.C. 346a(d)(2)), the authority transferred to the Administrator of the Environmental Protection Agency (35 FR 15623), and the authority delegated by the Administrator to the Deputy Assistant Administrator for Pesticide Programs (36 FR 9038), § 180.1021 is amended by adding new paragraph (c) as follows:

§ 180.1021 Copper; exemption from the requirement of a tolerance.

* * * * *

(c) Copper triethanolamine as an algicide or herbicide in fish hatcheries, lakes, ponds, and reservoirs.

Any person who will be adversely affected by the foregoing order may at any time on or before October 15, 1973, file with the Hearing Clerk, Environmental Protection Agency, Room 1019E, 4th & M Streets SW., Waterside Mall, Washington, D.C. 20460, written objections thereto in quintuplicate. Objections shall show wherein the person filing will be adversely affected by the order and specify with particularity the provisions of the order deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum or brief in support thereof.

Effective date.—This order shall become effective on September 13, 1973.

(Sec. 408(d)(2), 68 Stat. 512 (21 U.S.C. 346a(d)(2)).)

Dated September 7, 1973.

HENRY J. KORP,
Deputy Assistant Administrator for Pesticide Programs.

[FR Doc.73-19457 Filed 9-12-73;8:45 am]

Title 45—Public Welfare

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

PART 233—COVERAGE AND CONDITIONS OF ELIGIBILITY IN FINANCIAL ASSISTANCE PROGRAMS

Need and Amount of Assistance

Part 233 of Chapter II of Title 45 of the Code of Federal Regulations is amended to provide that any per capita judgment funds paid to members of the Blackfeet Tribe and the Gros Ventre Tribe (section 4 of Public Law 92-254, March 18, 1972); any benefits received under Title VII, Nurition Program for the Elderly, of the Older Americans Act of 1965 (section 709 as enacted by Public Law 92-258, March 22, 1972); and any compensation provided to individual volunteers under the Retired Senior Volunteer Program and the Foster Grandparent Program and Older Americans Community Service Programs established under Title VI of the Older Americans Act of 1965 (section 601(d) and 611(d), as enacted by Public Law 93-29, May 3, 1973) shall not be considered as income and resources in determining need and the amount of the assistance payments.

Notice of proposed rulemaking has been dispensed with because the amendments implement statutory requirements, and notice and public procedure thereon are unnecessary.

Accordingly, § 233.20(a)(4)(ii) is amended by adding new paragraphs (*e*), (*f*), and (*g*). As amended, § 233.20(a)(4)(ii) reads as follows:

§ 233.20 Need and amount of assistance.

(a) * * *

(4) *Disregard of income and resources common to OAA, AFDC, AB, APTD, or AABD.*

(i) * * *

(ii) Provide that, in determining need and the amount of the assistance payment, the following will be disregarded as income and resources:

(*a*) The value of the coupon allotment under the Food Stamp Act of 1964 in excess of the amount paid for the coupons;

(*b*) The value of the U.S. Department of Agriculture donated foods (surplus commodities);

(*c*) Any payment received under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;

(*d*) Any grant or loan to any undergraduate student for educational purposes made or insured under any programs administered by the Commissioner of Education;

(*e*) Any per capita judgment funds paid under Public Law 92-254 to members of the Blackfeet Tribe of the Blackfeet Indian Reservation, Montana and the Gros Ventre Tribe of the Fort Belknap Reservation, Montana.

(*f*) Any benefits received under Title VII, Nutrition Program for the Elderly, of the Older Americans Act of 1965, as amended; and

(*g*) Any compensation provided to individual volunteers under the Retired Senior Volunteer Program and the Foster Grandparent Program and Older Americans Community Service Programs established under Title VI of the Older Americans Act of 1965, as amended.

* * * * *

(Sec. 1102, 49 Stat. 647 (42 U.S.C. 1302).)
(Catalog of Federal Domestic Assistance Program No. 13.761, Public Assistance Maintenance Assistance (State Aid).)

Effective date.—The regulation in this section shall be effective on November 12, 1973.

Dated August 13, 1973.

JAMES S. DWIGHT, Jr.,
Administrator, Social and Rehabilitation Service.

Approved September 7, 1973.

FRANK CARLUCCI,
Acting Secretary.

[FR Doc.73-19486 Filed 9-12-73;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 32—HUNTING

Certain National Wildlife Refuges in California

The following regulations are issued and are effective September 13, 1972. These regulations apply to public hunting on portions of certain national wildlife refuges in California.

General conditions.—Hunting shall be in accordance with applicable State regulations. Portions of refuges which are open to hunting are designated by signs and/or delineated on maps. Special conditions applying to individual refuges are listed on the reverse side of maps available at the refuge headquarters and from the office of the Regional Director, Bureau of Sport Fisheries and Wildlife, 1500 Northeast Irving Street, Portland, Oregon.

§ 32.12 Special regulations; migratory game birds; for individual wildlife refuge areas.

Ducks, geese, coots, and gallinules may be hunted on the following refuge areas:

Clear Lake National Wildlife Refuge (Headquarters: Tule Lake National Wildlife Refuge, Route 1, Box 74, Tulelake, California 96134).

Special conditions.—(1) Boats with or without motors are permitted. Sculling and air-thrust boats are prohibited.

(2) Leaving boats, decoys, or other hunting equipment in other than designated areas is prohibited. Boats, decoys, or other equipment so left 1 hour after close of shooting time will be subject to removal and impoundment. The expense of the removal shall be paid for by the person owning or claiming ownership of the property. Such property is subject to sale or other disposal after 3 months, in accordance with Section 203m of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C., Sec. 484m) and regulations issued thereunder.

Colusa National Wildlife Refuge, Route 1, Box 311, Willows, California 95988.

Delevan National Wildlife Refuge, Route 1, Box 311, Willows, California 95988.

Kern National Wildlife Refuge, P.O. Box 219, Delano, California 93215.

Kesterson National Wildlife Refuge, P.O. Box 2176, Los Banos, California 98635.

Lower Klamath National Wildlife Refuge (Headquarters: Tule Lake National Wildlife Refuge, Route 1, Box 74, Tulelake, California 96134).

Special conditions.—(1) First two weekends only, entry permits are required to enter the hunting area for every individual with the exception of persons under 16 years of age, guides holding refuge Special Use Permits, and agricultural lessees and their agents during the conduct of normal agricultural operations.

(2) A 200-yard wide retrieving zone is established immediately within the exterior refuge boundary and at certain locations between the open and closed areas as designated on the hunting map. A hunter may enter the retrieving zone to retrieve dead or crippled birds which he has shot, providing he does not carry weapons. Possession of firearms in the retrieving zone or closed portion of the refuge is prohibited, except that unloaded firearms may be carried only along established routes of travel through the zone or closed area when necessary to reach or leave the hunting area.

(3) Boats, with the exception of air-thrust boats, are permitted with or without motors. Sculling is prohibited.

(4) Leaving boats, decoys, or other hunting equipment in other than designated areas is prohibited. Boats, decoys, or other equipment left 1 hour after close of shooting time will be subject to removal and impoundment. The expense of the removal shall be paid for by the person owning or claiming ownership of the property. Such property is subject to sale or other disposal after 3 months, in accordance with Section 203m of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C., Sec. 484m) and regulations issued thereunder.

Merced National Wildlife Refuge, P.O. Box 854, Merced, California 95340.

Modoc National Wildlife Refuge, P.O. Box 1439, Alturas, California 96101.

Sacramento National Wildlife Refuge, Route 1, Box 311, Willows, California 95988.

Salton Sea National Wildlife Refuge, P.O. Box 247, Calipatria, California 92233.

San Luis National Wildlife Refuge, P.O. Box 2176, Los Banos, California 93635.

Special Condition.—(1) This hunting area will be open for the conduct of a special falconry event on December 27 and 28, 1973, in addition to those dates covered by State regulations.

Sutter National Wildlife Refuge, Route 1, Box 311, Willows, California 95988.

Tule Lake National Wildlife Refuge, Route 1, Box 74, Tulelake, California 96134.

Special conditions.—(1) First two weekends only, entry permits are required to enter the hunting area for every individual with the exception of persons under 16 years of age, guides holding refuge Special Use Permits, and agricultural lessees and their agents during the conduct of normal agricultural operations.

(2) A 200-yard retrieving zone is established immediately within the exterior refuge boundary and at certain locations between the open and closed areas as designated on the hunting map. A hunter may enter the retrieving zone to retrieve dead or crippled birds which he has shot, providing he does not carry weapons. Possession of firearms in the retrieving zone or closed portion of the refuge is prohibited, except that unloaded firearms may be carried only along established routes of travel through the zone or closed area when necessary to reach or leave the hunting area.

(3) Boats, with the exception of airthrust boats, are permitted with or without motors. Sculling is prohibited.

(4) Leaving boats, decoys, or other hunting equipment in other than designated areas is prohibited. Boats, decoys, or other equipment left 1 hour after close of shooting time will be subject to removal and impoundment. The expense of the removal shall be paid for by the person owning or claiming ownership of the property. Such property is subject to sale or other disposal after 3 months, in accordance with Section 203m of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C., Sec. 484m) and regulations issued thereunder.

§ 32.22 Special regulations; upland game; for individual wildlife refuge areas.

Upland game may be hunted on the following refuge areas:

Colusa National Wildlife Refuge, Route 1, Box 311, Willows, California 95988.

Delevan National Wildlife Refuge, Route 1, Box 311, Willows, California 95988.

Kern National Wildlife Refuge, P.O. Box 219, Delano, California 93215.

Merced National Wildlife Refuge, P.O. Box 854, Merced, California 95340.

Sacramento National Wildlife Refuge, Route 1, Box 311, Willows, California 95988.

Sutter National Wildlife Refuge, Route 1, Box 311, Willows, California 95988.

Ring-necked pheasant may be hunted on the following refuge areas:

Lower Klamath National Wildlife Refuge (Headquarters: Tule Lake National Wildlife Refuge, Route 1, Box 74, Tulelake, California 96134).

Special condition.—(1) Additional refuge area designated by special posting will be open to a special 2-day pheasant hunt.

Tule Lake National Wildlife Refuge, Route 1, Box 74, Tulelake, California 96134.

Special condition.—(1) Additional refuge area designated by special posting will be open to a special 2-day pheasant hunt.

The provisions of these special regulations supplement the regulations which govern hunting on wildlife refuge areas generally and which are set forth in Title 50, Code of Federal Regulations, Part 32, and are effective through June 30, 1974.

R. KAHLER MARTINSON,
Regional Director, Bureau of Sport Fisheries and Wildlife.

AUGUST 31, 1973.

[FR Doc.73-19452 Filed 9-12-73;8:45 am]

PART 32—HUNTING

Browns Park National Wildlife Refuge, Colo.

The following special regulation is issued and is effective on September 13, 1973.

§ 32.12 Special regulations; migratory game birds; for individual wildlife refuge areas.

COLORADO

BROWNS PARK NATIONAL WILDLIFE REFUGE

Public hunting of ducks, coots, and mergansers on the Browns Park National Wildlife Refuge, Colorado, is permitted from September 29 through October 12, 1973, inclusive, and from November 3, 1973, through January 20, 1974, inclusive; geese, from November 24 through December 16, 1973, inclusive; but only on the area designated by signs as open to hunting. This open area, comprising 1,775 acres, is delineated on maps available at refuge headquarters, Greystone, Colorado, and from the Regional Director, Bureau of Sport Fisheries and Wildlife, 10597 West 6th Avenue, Denver, Colorado 80215. Hunting shall be in accordance with all applicable State and Federal regulations covering the hunting of ducks, geese, coots, and mergansers subject to the following special conditions:

(1) Vehicle travel within the refuge will be restricted to designated routes and parking areas where hunters must check in and out of the hunting area.

The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 32, and are effective through January 20, 1974.

SEPTEMBER 5, 1973.

H. J. JOHNSON,
Refuge Manager, Browns Park National Wildlife Refuge, Greystone, Colorado.

[FR Doc.73-19455 Filed 9-12-73;8:45 am]

PART 32—HUNTING

Flint Hills National Wildlife Refuge, Kans.

The following special regulation is issued and is effective on September 13, 1973.

§ 32.12 Special regulations; migratory game birds; for individual wildlife refuge areas.

KANSAS

FLINT HILLS NATIONAL WILDLIFE REFUGE

Public hunting of ducks, geese, coots, and mergansers on the Flint Hills National Wildlife Refuge, Kansas, is permitted as follows: Ducks, coots, and mergansers from October 6 through October 21, 1973, inclusive, and from November 10 through December 23, 1973, inclusive; geese, from October 6 through October 21, 1973, inclusive, and from November 3 through December 16, 1973, inclusive for all species of geese, and from December 17 through December 28, 1973, inclusive only for the Snow and Blue Geese, but only on the area designated by signs as open to hunting. This open area, comprising 5,165 acres, is delineated on maps available at refuge headquarters, Burlington, Kansas, and from the Area Manager, Bureau of Sport Fisheries & Wildlife, 601 East 12th Street, Kansas City, Missouri 64106. Hunting shall be in accordance with all applicable State and Federal regulations covering the hunting of ducks, geese, coots, and mergansers subject to the following special conditions:

(1) Vehicle access shall be restricted to designated parking areas and to existing roads.

(2) Blind construction by the public is permitted but limited to temporary above ground construction. Blind construction does not constitute a reservation of hunting space. Daily occupancy of blinds erected on refuge hunting units will be determined on a first-come-first-serve basis.

The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 32, and are effective through December 28, 1973.

MICHAEL J. LONG,
Acting Refuge Manager, Flint Hills National Wildlife Refuge, Burlington, Kans.

SEPTEMBER 7, 1973.

[FR Doc.73-19443 Filed 9-12-73;8:45 am]

PART 32—HUNTING

Shiawassee National Wildlife Refuge, Michigan

The following special regulations is issued and is effective September 13, 1973.

§ 32.12 Special regulations; migratory game birds; for individual wildlife refuge areas.

MICHIGAN

SHIAWASSEE NATIONAL WILDLIFE REFUGE

Public hunting of geese on the Shiawassee National Wildlife Refuge, Michigan, is permitted from waterfowl opening hour to 12 noon each odd numbered day from October 1 through November 29, 1973, except no hunting on November 15. The hunting area comprising approximately 1,200 acres is delineated on maps located at the refuge headquarters, Saginaw, Michigan, and at the office of the Regional Director, Bureau of Sport Fisheries and Wildlife, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111.

Hunting shall be in accordance with all applicable State and Federal regulations covering the hunting of geese subject to the following special conditions:

(1) Hunting shall be by Federal permit and only from assigned blinds and pits.

(2) Certain designated blinds will be restricted to the use of 12 gauge shotguns and iron shot only.

(3) A fee of two dollars per hunter will be charged for the privilege of hunting.

(4) Two or three hunters will be permitted in each blind or pit.

(5) Applications for hunting must be postmarked not later than September 15, 1973.

(6) Assignment of blinds or pits will be at random by the refuge manager, and only successful applicants will be notified.

(7) After completion of the day's hunt, all hunters must proceed to refuge headquarters for check-out and the submission of geese for examination.

The provisions of these special regulations supplement the regulations which govern hunting on wildlife refuges generally which are set forth in Title 50, Code of Federal Regulations, Part 32, and are effective through November 29, 1973.

CHARLES A. HUGHLETT,
Acting Regional Director.

AUGUST 31, 1973.

[FR Doc.73-19449 Filed 9-12-73;8:45 am]

PART 32—HUNTING

Tamarac National Wildlife Refuge, Minnesota

The following special regulations is issued and is effective September 13, 1973.

§ 32.12 Special regulations; migratory game birds; for individual wildlife refuge areas.

MINNESOTA

TAMARAC NATIONAL WILDLIFE REFUGE

Public hunting of ducks, geese, and coots on the Tamarac National Wildlife Refuge, Minnesota, is permitted only on the area designated by "Public Hunting Area" signs. This open area, comprising 12,500 acres, is delineated on a map available at the refuge headquarters, Rochert, Minnesota 56578, and from the office of the Regional Director, Bureau of Sport Fisheries and Wildlife, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111. Hunting shall be in accordance with all applicable State and Federal regulations.

Ducks and coots may be taken from October 1, 1973, through October 10, 1973, and October 20, 1973, through November 18, 1973. Hunting of Canada geese will be permitted from October 1, 1973, through October 21, 1973. All other geese may be hunted from October 1, 1973, through November 18, 1973.

Portions of Tamarac Refuge open to hunting will be posted "Public Hunting Area" except as described in refuge hunting maps. In addition, no persons shall, for the purpose of hunting, enter or leave the refuge except by access roads so designated; and all hunters shall comply with further regulations which the Refuge Manager may prescribe.

The provisions of this special regulation supplement the regulations which are set forth in Title 50, Code of Federal Regulations, Part 32, and are effective through November 18, 1973.

CHARLES A. HUGHLETT,
Acting Regional Director.

AUGUST 31, 1973.

[FR Doc.73-19448 Filed 9-12-73;8:45 am]

PART 32—HUNTING

Montezuma National Wildlife Refuge, New York

The following special regulation is issued and effective during the period October 1, 1973, through December 31, 1973.

§ 32.12 Special regulations; migratory game birds; for individual wildlife refuge areas.

NEW YORK

MONTEZUMA NATIONAL WILDLIFE REFUGE

The public hunting of migratory waterfowl on the Montezuma National Wildlife Refuge, New York, is permitted on the areas designated by the signs as open to waterfowl hunting. The waterfowl hunting area known as the Storage Pool comprises 1,340 acres and is delineated on maps available at refuge headquarters, Seneca Falls, New York, and from the Regional Director, Bureau of Sport Fisheries anl Wildlife, John W. McCormack Post Office and Courthouse, Boston, Massachusetts 02109.

Hunting shall be in accordance with all applicable State and Federal regulations covering the hunting of migratory waterfowl subject to the following special conditions:

1. Hunting is permitted on Tuesdays, Thursdays, and Saturdays.

2. On designated days migratory waterfowl will be hunted with 12-gauge shotguns using iron shot provided by the refuge at a charge of $.16 per round.

3. Applications for blind reservations received no later than September 15 will be accepted. Reservations for blinds, for hunting through November 3, will be selected by public drawing. Successful applicants must appear in person at the refuge waterfowl check station prior to 1 hour before legal shooting time on the date reserved. Unreserved and forfeited blinds will be awarded by a drawing on the morning of the hunt to hunters without reservations.

4. The first two Saturdays (and Sundays if necessary) of the season will be reserved for the Young Waterfowler's Training Program hunt. A brochure describing this program is also available.

5. No more than three persons are permitted in each blind.

6. Loaded guns are not permitted outside the blind except when in pursuit of a crippled bird.

7. Hunters must provide a minimum of six duck decoys and will be limited to fifteen shells each, with shot size no larger than No. 2.

8. All hunting ends each hunting day at 12 noon local time, and all hunters must check out at the waterfowl check station no later than 1:00 p.m. local time.

9. A user fee of $2.00 per blind will be charged.

The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuge areas generally, which are set forth in Title 50, Code of Federal Regulations, Part 32, and are effective through December 31, 1973.

RICHARD E. GRIFFITH,
Regional Director,
Bureau of Sport Fisheries and Wildlife.

SEPTEMBER 4, 1973.

[FR Doc.73-19453 Filed 9-12-73;8:45 am]

PART 32—HUNTING

Seedskadee National Wildlife Refuge, Wyo.

The following special regulation is issued and is effective on September 13, 1973.

§ 32.12 Special regulations; migratory game birds; for individual wildlife refuge areas.

WYOMING

SEEDSKADEE NATIONAL WILDLIFE REFUGE

Public hunting of geese, ducks, coots, and mergansers on the Seedskadee National Wildlife Refuge, Wyoming, is permitted as follows: Ducks, coots, and mergansers, from October 6 through December 30, 1973, inclusive; geese from October 6 through November 19, 1973, inclusive, and December 1 through December 30, 1973, inclusive. All of the refuge area, comprising 12,370 acres, and so designated by signs, is open to hunting. Maps of the area are available at the

refuge office, Room 118, Courthouse, Green River, Wyoming. Hunting shall be in accordance with all applicable State and Federal regulations governing the hunting of geese, coots, ducks and mergansers.

The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 32, and are effective through December 30, 1973.

MERLE O. BENNETT,
Refuge Manager, Seedskadee National Wildlife Refuge, Green River, Wyoming.

SEPTEMBER 6,1973.

[FR Doc.73-19476 Filed 9-12-73;8:45 am]

PART 32—HUNTING

Browns Park National Wildlife Refuge, Colo.

The following special regulation is issued and is effective on September 13, 1973.

§ 32.22 Special regulations; upland game; for individual wildlife refuge areas.

COLORADO

BROWNS PARK NATIONAL WILDLIFE REFUGE

Public hunting for cottontail rabbits is permitted on the Browns Park National Wildlife Refuge, Colorado, from October 1, 1973, through February 28, 1974, inclusive, except in those areas designated by signs as closed to hunting. This open area, comprising 4,501 acres, is delineated on maps available at refuge headquarters, Greystone, Colorado, and from the Regional Director, Bureau of Sport Fisheries and Wildlife, 10597 West 6th Avenue, Denver, Colorado 20240.

Hunting will be in accordance with all applicable State regulations covering the hunting and possession of cottontail rabbits.

The provisions of this special regulation supplement the regulations which govern hunting of wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 32, and are effective through February 28, 1974.

H. J. JOHNSON,
Refuge Manager, Browns Park National Wildlife Refuge, Vernal, Utah.

SEPTEMBER 5, 1973.

[FR Doc.73-19454 Filed 9-12-73;8:45 am]

PART 32—HUNTING

Valentine National Wildlife Refuge; Nebr.

The following special regulation is issued and is effective September 13, 1973.

§ 32.22 Special regulations; upland game; for individual wildlife refuge areas.

NEBRASKA

VALENTINE NATIONAL WILDLIFE REFUGE

The public hunting of prairie grouse and pheasants on the Valentine National Wildlife Refuge, Nebraska, shall be permitted only on areas designated by signs as open to hunting. The open areas are delineated on maps available at refuge, headquarters, Valentine, Nebraska, and from the office of the Regional Director, 10597 West Sixth Avenue, Denver, Colorado, 80215.

Hunting shall be in accordance with all applicable State regulations governing the hunting of prairie grouse and pheasants subject to the following special regulations:

(1) The open season for hunting prairie grouse on the refuge extends from September 22, 1973, through November 4, 1973. The open area shall include 40,765 acres or 57 percent of the refuge.

(2) The open season for hunting pheasants on the refuge extends from November 3, 1973, through January 13, 1974. The open areas shall include 70,085 acres or 98 percent of the refuge.

(3) Since the regular State prairie grouse hunting season overlaps the regular State pheasant hunting season by two days (November 3 and 4, 1973) all portions of the refuge east of U.S. Highway 83 will be closed to the hunting of pheasants on these two days. Pheasants hunting east of Highway 83 will be permitted on November 5, 1973, and continue through the end of the regular season.

(4) The refuge will be open to prairie grouse and pheasant hunting during the regular State duck hunting season.

The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 32, and are effective through the close of the regular State 1973–1974 prairie grouse and pheasant hunting seasons.

ROBERT M. ELLIS,
Refuge Manager, Valentine National Wildlife Refuge, Valentine, Nebraska.

AUGUST 17, 1973.

[FR Doc.73-19491 Filed 9-12-73;8:45 am]

PART 32—HUNTING

Browns Park National Wildlife Refuge; Colorado

The following special regulation is issued and is effective September 13, 1973.

§ 32.32 Special regulations; big game; for individual wildlife refuge areas.

COLORADO

BROWNS PARK NATIONAL WILDLIFE REFUGE

Public hunting of deer is permitted on the Browns Park National Wildlife Refuge, Colorado, for the 1973 rifle season except in those areas designated by signs as closed to hunting. Rifle deer season is October 13 through October 24, 1973, inclusive.

Hunting will be in accordance with all applicable State regulations covering the hunting of deer.

The provisions of this special regulation supplement the regulations which govern hunting of wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 32, and are effective through October 24, 1973.

H. J. JOHNSON,
Refuge Manager, Browns Park National Wildlife Refuge, Vernal Utah.

SEPTEMBER 5, 1973.

[FR Doc.73-19441 Filed 9-12-73;8:45 am]

PART 32—HUNTING

Noxubee National Wildlife Refuge, Miss.

The following special regulations are issued and are effective on October 6, 1973.

§ 32.32 Special regulations; big game; for individual wildlife refuge areas.

MISSISSIPPI

NOXUBEE NATIONAL WILDLIFE REFUGE

Hunting shall be in accordance with applicable State regulations. Portions of the refuge which are open to hunting are designated by signs and delineated on maps available at refuge headquarters and from the office of the Regional Director, Bureau of Sport Fisheries and Wildlife, 17 Executive Park Drive NE., Atlanta, Georgia 30329. White-tailed deer may be hunted in accordance with the following special conditions:

(1) Hunting with guns is permitted November 26–December 1, 1973, and December 26–27, 1973, excluding Sundays.

(2) Guns are restricted to centerfire guns, 20 gauge or larger shotguns firing slugs or number four or larger buckshot, and muzzle loading rifles and shotguns.

(3) Hunting of deer with longbows only is permitted October 6–13, 1973, excluding Sundays.

(4) A primitive weapons hunt for deer will be conducted December 10–15, 1973.

(5) Horses and dogs are not permitted.

(6) Fires and cutting of trees are not permitted.

(7) Primitive camping is permitted in designated camping area only.

(8) All deer killed must be checked out at one of the designated refuge checking stations.

(9) The number of hunters is not limited. Permits are required for all deer hunts and will be issued from Refuge Headquarters.

The provisions of these special regulations supplement the regulations which govern hunting on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, and are effective through December 30, 1973.

C. EDWARD CARLSON,
Regional Director, Bureau of Sport Fisheries and Wildlife.

SEPTEMBER 4, 1973.

[FR Doc.73-19482 Filed 9-12-73;8:45 am]

PART 32—HUNTING

Montezuma National Wildlife Refuge; New York

The following special regulation is issued and effective during the period November 19 through December 4, 1973.

§ 32.32 Special regulations; big game; for individual wildlife refuge areas.

NEW YORK

MONTEZUMA NATIONAL WILDLIFE REFUGE

Public hunting of deer on the Montezuma National Wildlife Refuge, New York, is permitted except on the areas designated by signs as closed. The open area, comprising 3,874 acres, is delineated on maps available at refuge headquarters, 5 miles east of Seneca Falls, New York, and from the Regional Director, Bureau of Sport Fisheries and Wildlife, John W. McCormack Post Office and Courthouse, Boston, Massachusetts 02109. Hunting shall be in accordance with all applicable State regulations covering the hunting of deer subject to the following special conditions:

1. The open season is Monday through Friday from November 19 to December 4, inclusive. Actual dates open are November 19, 20, 21, 22, 23, 26, 27, 28, 29, 30; December 3 and 4.

2. Only longbows may be used. No gun hunting will be allowed.

3. Successful hunters must register their kill at refuge headquarters.

The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuge areas generally, which are set forth in Title 50, Code of Federal Regulations, Part 32, and are effective through December 4, 1973.

RICHARD E. GRIFFITH,
Regional Director, Bureau of Sport Fisheries and Wildlife.

SEPTEMBER 4, 1973.

[FR Doc.73-19451 Filed 9-12-73;8:45 am]

PART 32—HUNTING

Presquile National Wildlife Refuge; Virginia

The following special regulations are issued and are effective during the period October 15, 1973 through November 9, 1973.

§ 32.32 Special regulations; big game; for individual wildlife refuge areas.

VIRGINIA

PRESQUILE NATIONAL WILDLIFE REFUGE

Public hunting of white-tailed deer on the Presquile National Wildlife Refuge is permitted on the entire refuge except within 200 yards of all buildings. Hunting shall be in accordance with all applicable State regulations governing the hunting of white-tailed deer, subject to the following special conditions:

(1) A Federal permit will be required at no charge to the applicant. Permits will be issued for a two consecutive day period except for November 7 and 9, which will be for one day only. Permits will be limited to 135 for each two-day period and 80 for each one-day hunt. They will be issued in advance of the season to hunters selected from a public drawing to be held September 17, 1973, in the refuge office, 202 Tartan Building, 320 E. Broadway, Hopewell, Virginia. Applications must be printed or typed and contain the following information: Name, address, specify gun hunt or archery hunt, up to three other names and addresses of members in party, three preference dates, and whether hunter will use boat or not. Permits are nontransferable and will be mailed to selected applicants after the drawing. Alternates will also be selected from standby hunters at the ferry landing to fill any vacant slots if permittees do not show up.

(2) Only white-tailed deer may be taken from one half-hour before sunrise to one half-hour after sunset with bow and arrow only on October 15, 16, 19, 20, 26, 27; and with shotguns on November 7 and 9, 1973.

(3) Bag limits: One deer per day, either sex.

(4) All hunters must enter the refuge on the ferry at 6 a.m. e.d.t. (5 a.m. e.s.t.) except that boats will be permitted only for those hunters desiring to hunt in the swamp. All boat occupants must wear life jackets. Only small boats will be permitted with outboard engines no larger than 10 h.p. There will be an official State checking station at the refuge headquarters. Hunters must be checked out by refuge officials before leaving the island and leave the refuge by 7 p.m. e.d.t. (6 p.m. e.s.t.).

(5) All travel on the refuge will be on foot or by refuge vehicles. Boats will be permitted in the swamp creeks. Horses and dogs are prohibited.

(6) Possession of firearms on the refuge during the bow and arrow only hunts is prohibited.

(7) All arrows in the possession of each hunter must be marked with the stand number issued to the hunter.

(8) One-hundred thirty-five stands corresponding to the allowable number of hunters on each day of the bow hunts and 80 stands corresponding to the allowable number of hunters on each day of the gun hunts are located throughout the refuge. Each hunter will be assigned the stand corresponding to his permit number. Fluorescent orange must be visible on each gun hunter. Bow hunters will remain at their assigned stands from one half-hour before sunrise to 10 a.m. From 10 a.m. to one half-hour after sunset, they may hunt anywhere within the open area. Shotgun hunters will remain on their stand throughout the day's hunt. Boats must be moored throughout the day. Boats leaving the creek during the day cannot return that day.

(9) All hunters under 18 years of age must be accompanied by an adult.

(10) Scouting will be permitted on September 27, 28, and 29, 1973. The refuge ferry will take passengers to the island at 8 a.m. e.d.t., and return to the mainland at 10 a.m. and 12 noon.

(11) These special regulations and maps are available at refugee headquarters, Hopewell, Virginia, and from the Regional Director, Bureau of Sport Fisheries and Wildlife, John W. McCormack Post Office and Courthouse, Boston, Massachusetts 02109.

The provisions of these special regulations supplement the regulations which govern hunting on wildlife refuge areas generally, as set forth in Title 50, Code of Federal Regulations, Parts 28 and 32, and are effective through November 9, 1973.

WILLARD M. SPAULDING, JR.,
Acting Regional Director, Bureau of Sport Fisheries and Wildlife.

AUGUST 31, 1973.

[FR Doc.73-19450 Filed 9-12-73;8:45 am]

PART 32—HUNTING

Valentine National Wildlife Refuge; Nebr.

The following special regulation is issued and is effective September 13, 1973.

§ 32.32 Special regulations; big game; for individual wildlife refuge areas.

NEBRASKA

VALENTINE NATIONAL WILDLIFE REFUGE

Public hunting of deer on the Valentine National Wildlife Refuge, Nebraska, is permitted only on the area designated by signs as open to hunting. This open area, comprising 70,085 acres, is delineated on maps available at refuge headquarters, Valentine, Nebraska, and from the office of the Regional Director, 10597 West Sixth Avenue, Denver, Colorado 80215.

Hunting shall be in accordance with all applicable state regulations governing the hunting of deer subject to the following special regulations:

(1) The open season for hunting deer with firearms on the refuge will extend from November 10, 1973, through November 18, 1973.

(2) The hunting season for deer on the refuge with bow and arrow will extend from September 15, 1973, through December 31, 1973, except that bow and arrow season will be closed during the season open to hunting deer with firearms.

The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 32, and are effective through December 31, 1973.

ROBERT M. ELLIS,
Refuge Manager, Valentine National Wildlife Refuge, Valentine, Nebraska.

AUGUST 17, 1973.

[FR Doc.73-19490 Filed 9-12-73;8:45 am]

PART 33—SPORT FISHING

Valentine National Wildlife Refuge, Nebr.

The following special regulation is issued and is effective on September 13, 1973.

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

NEBRASKA

VALENTINE NATIONAL WILDLIFE REFUGE

Sport fishing on the Valentine National Wildlife Refuge, Nebraska, is permitted only on the areas designated by signs as open to fishing. These open areas comprising 2,880 acres of water on the refuge, are delineated on maps available at the refuge headquarters and from the Office of the Regional Director, 10597 West Sixth Avenue, Denver, Colorado 80215.

Sport fishing shall be in accordance with all applicable State regulations subject to the following special conditions:

(1) The open season for sport fishing on the refuge during daylight hours only will be from January 1, 1974, through December 31, 1974, in those waters posted as open.

(2) Hook and line, bow and arrow, and hand spearing fishing only are permitted.

(3) Boats with or without electric-type outboard motors are permitted on lakes opened to sport fishing in accordance with State boating regulations. Internal combustion type motors are prohibited.

(4) The use or possession of live minnows or fish for bait or the possession of any seine or net for capturing live minnows is prohibited. Dead minnows or parts thereof may be used as bait.

The provisions of this special regulation supplement the regulations which govern sport fishing on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 33, and are effective through December 31, 1974.

ROBERT M. ELLIS,
Refuge Manager, Valentine National Wildlife Refuge, Valentine, Nebraska.

AUGUST 17, 1973.

[FR Doc.73-19489 Filed 9-12-73;8:45 am]

Title 15—Commerce and Foreign Trade

CHAPTER III—DOMESTIC AND INTERNATIONAL BUSINESS ADMINISTRATION, DEPARTMENT OF COMMERCE

SUBCHAPTER B—EXPORT REGULATIONS

[13th Gen. Rev., Export Regs., Amdt.]

PART 376—SPECIAL COMMODITY POLICIES AND PROVISIONS

Requirement of Special Report for Sales of Certain Agricultural Products Where Country of Export Shipment is Optional

The FEDERAL REGISTER issuance of August 29, 1973, announced the revised reporting requirements with respect to anticipated and actual export activity for those agricultural commodities listed in Supplement No. 1 to Part 376 of the Export Control Regulations. The regulations were amended to require regular weekly reporting only on Form DIB–635P, and the filing instructions for both Form DIB–635P and Form DIB–634P were amplified. Further, the deadlines for filing agricultural reports were changed.

In order to provide more detailed reporting of anticipated exports of agricultural commodities, the Export Control Regulations are hereby revised to provide for separate accounting of sales in those cases where the country of export shipment for the commodity involved is left to the option of the seller and/or the buyer. Hereafter, only those portions of such sales which it has been determined will be shipped from the United States shall be reported on the weekly reporting Form DIB–635P. Details on contracts for which the country of export has not yet been determined, shall be reported on a new Form DIB–650P.

An optional origin sales contract should no longer be reported on Form DIB–650P after the exporter has reported that this contract has been cancelled, bought back, or that the option has been exercised with respect to the total quantity specified: (1) By a determination to export from the United States (in which case such transaction shall be reported on Form DIB–635P), and/or (2) by a determination to perform by shipment from a country or countries other than the United States.

Accordingly, the regulations are revised to require each U.S. exporter to file, no later than September 24, 1973, and each week thereafter, a report on Form DIB–650P, "Report of Optional Sales of Commodities Subject to Reporting of Anticipated Exports."[1] Such reports shall indicate in those cases where the country of export shipment is optional, the details of all orders for the listed agricultural commodities which were unfilled or partially filled as of September 21, 1973, and each succeeding week.

At such time as the option to ship from the United States has been determined, the order shall be reported weekly on Form DIB–635P pursuant to the rules with respect to such form contained in § 376.3(a)(2). The information required to be reported on Form DIB–650P is specified in § 376.3(a)(3), as revised.

Accordingly, 376.3(a) of the Export Control Regulations (15 CFR Part 376) is amended by revising subparagraph (2), by redesignating subparagraphs (3) and (4) as subparagraphs (4) and (5) of such section, respectively; by adding a new subparagraph (3); and by revising subparagraph (5), as redesignated. These amended and additional provisions read as follows:

§ 376.3 Agricultural commodities requiring reports.

(a) *Exports and anticipated exports of certain agricultural commodities.* * * *

(2) *Subsequent reports.*—On the date indicated in Column E of Supplement No. 1 to this Part 376, and on each Monday thereafter (or on the first business day following such a Monday, if it is a National holiday), each U.S. exporter shall file a report on the appropriate Form DIB–635P (promulgated in series (a) through (j) to correspond with the Form DIB–634P series) which shall state as of the close of business on the preceding Friday all anticipated exports of more than $250 for each separate commodity set forth in such Supplement No. 1. Such report shall include a reconciliation of all changes from the prior report (if any), which will show in aggregate form: (i) all new anticipated exports of more than $250; (ii) all cancellations of, or changes in, orders previously reported; (iii) a breakdown indicating whether such cancelled orders were accepted on or before the date shown in Column C of Supplement No. 1, or accepted after such date; (iv) all exports made since the closing date of the prior report, whether or not such exports were made against reported or accepted orders; (v) a breakdown of exports indicating whether they were against orders accepted on or before the date shown in Column C of Supplement No. 1, or against orders accepted after that date; (vi) any changes in the quantities to be exported to particular countries; (vii) any changes in the month of scheduled or anticipated export; (viii) in case of optional commodity sales, any change in the particular class or kind of commodity expected to be exported from the U.S.; and (ix) in the case of anticipated exports for any commodity, month, or country that were not previously reported, an entry of zero (0) in Item 1 and the addition of the new information, as appropriate. Once an additional Form DIB–634P has been submitted, the appropriate Form DIB–635P shall be submitted each week with an itemization of the specific changes for the week being reported. The notation, "No Change", shall be entered as a summarization when the entire report or any column thereof is unchanged from the previous week. Where there are changes, even though these do not result in differences in the aggregate because they are offsetting, such changes shall be entered on the appropriate Form DIB–635P. Weekly reporting for any commodity group may be discontinued only when anticipated shipments of that group have been reduced to zero, and shall be resumed whenever new anticipated exports occur (and at the time of such resumption, a Form DIB–634P shall be filed pursuant to the rules of subparagraph (1) of this paragraph, as if it were an initial report). If the date in Column C of Supplement No. 1 is different from that shown in the heading or any item of Form DIB–635P, the dates on the form shall be corrected accordingly. On any Form DIB–635P required to be filed on September 24, 1973, the quantity previously reported as expected to be exported from the United States but which, as of September 21, 1973, is subject to an optional origin sales order or arrangement under which the country of export

[1] Form DIB–650P will soon be available from all U.S. Department of Commerce District Offices and from the Office of Export Control (Attn: 547), U.S. Department of Commerce, Washington, D.C. 20230.

shipment has not as of such date been determined, shall be subtracted in Item 9 of such form. Subsequently, the quantity expected to be exported from the United States because of a determination as to the country of export shipment shall be reported on the appropriate Form DIB–635P filed for the week during which such determination was made pursuant to the rules of this subparagraph.

(3) *Report of contract details for sales where country of export shipment is optional.*—On September 24, 1973, and on each Monday thereafter (or on the first business day following such a Monday if it is a National holiday), each U.S. exporter shall file a report on Form DIB–65P which shall state as of the close of business on the preceding Friday all accepted orders which are unfilled in whole or in part, and all other firm arrangements, for international trade of more than $250 for each separate commodity set forth in Supplement No. 1 to this Part 376. Such a report shall be required only in the case of sales where the country of export shipment is optional and, under the terms of the contract or other arrangement, export shipment in whole or in part from the United States is not excluded. Such report shall show by country of destination and Schedule B Number; and in the case of wheat and cotton, also by the separate classes set forth in Supplement No. 1: (i) The tonnage (in metric tons) or such other unit of quantity specified in Supplement No. 1, involved in optional origin sales reported in the previous report (if any); (ii) additional quantities involved in new optional origin sales of more than $250 and adjustments which increase previously reported sales; (iii) the quantities involved in optional origin sales which it has been determined during the week covered by the report will be shipped from the United States; (iv) the quantities which it has been determined during the week covered by the report will be shipped from one or more countries other than the United States; (v) cancellations, "buy-backs", and other adjustments which decrease previously reported optional origin sales; and (vi) the adjusted total quantity involved in optional origin sales (including adjustment for those quantities for which countries of export shipment have been determined). (However, the first such report (that required to be filed on September 24, 1973) should show only the data refered to in paragraph (a)(3)(vi) of this origin sales, the country of destination section. In cases where under optional is also optional, such sales shall be aggregated in one column of the report and "Undesignated shall be entered in the space provided for indicating the country of destination. The notation "No Change" shall be entered as a summarization when the entire report or any column thereof is unchanged from the previous week. A separate Form DIB–650P shall be filed under the rules of this subparagraph for each commodity group listed in Supplement No. 1. Weekly reporting for any commodity group may be discontinued only when anticipated shipments of that group have been reduced to zero, and shall be resumed whenever new optional origin sales occur with respect to such group.

* * * * *

(5) *Reporting requirements.*— (i) *Manner of Reporting.*—All reports required under this Part 376 must be filed in an original and one copy with the Office of Export Control. Except as provided in this subdivision, such reports shall be deemed filed only when actually received by the Office of Export Control. Reports sent by mail must be addressed to Post Office Box 7138, Ben Franklin Station, Washington, D.C. 20044, and will be deemed to have been timely filed irrespective of whether these are in fact received by the Office of Export Control within the Monday deadline, but only if the reports are postmarked by the U.S. Postal Service no later than midnight of the Friday preceding the Monday deadline and they are received by the Office of Export control in the regular and usual course of the mail. Additionally, reports on Forms DIB–635P and DIB–650P may be filed by Telex or TWX no later than the Monday following the week covering the report, in the manner set forth in Item No. 3 to Supplement No. 2 of this Part 376, but only if the actual forms, marked "Confirmation of Telex (or if apropriate, TWX) Report" across the top, are received by the Office of Export Control in Washington, D.C. no later than the first Wednesday following the week being reported.

* * * * *

Effective date of action.—September 11, 1973.

RAUER H. MEYER,
Director,
Office of Export Control.

[FR Doc.73-19616 Filed 9-12-73;8:45 am]

Proposed Rules

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

DEPARTMENT OF THE TREASURY

United States Customs Service

[19 CFR Part 151]

CERTAIN FRUIT JUICES

Determination of Average Brix Values

Notice is hereby given that under the authority of R.S. 251, as amended, section 624, 46 Stat. 759, 77A Stat. 14; 19 U.S.C. 66, 1202 (Gen. Hdnte. 11 and sch. 1, pt. 12A, hdnte. 3(b)), and 1624, it is proposed to make a finding of average Brix value for certain unconcentrated natural fruit juice in the trade and commerce of the United States and to add this information to the list of the average Brix values for unconcentrated natural fruit juices, set forth in section 151.91 of the Customs Regulations.

The fruit juices for which average Brix values are proposed and the values proposed are as follows:

	Degrees
Bilberry (Whortleberry, Vaccinium Myrtillum)	13.4
Soursop (Guanabana, Annono Muricata)	16.0

Accordingly, it is proposed to amend the alphabetical listing of unconcentrated natural fruit juices whose Brix value has been determined, set forth at the end of § 151.91 of the Customs regulations, by inserting Bilberry (Whortleberry, Vaccinium Myrtillum) 13.4 after Apricot 14.3 and before Black currant 15.0, and by inserting Soursop (Guanabana, Annono Muricata) 16.0 after Red currant 10.5 and before Strawberry 8.0.

Data, views, or arguments with respect to the foregoing proposal may be addressed to the Commissioner of Customs, Attention: Regulations Division, Washington, D.C. 20229. To insure consideration of such communications, they must be received not later than October 15, 1973.

Written material or suggestions submitted will be available for public inspection in accordance with § 103.3(b) of the Customs Regulations (19 CFR 103.3(b)), at the Headquarters, United States Customs Service, Regulations Division, Washington, D.C., during regular business hours.

[SEAL] LEONARD LEHMAN,
Acting Commissioner of Customs.

Approved September 5, 1973.

EDWARD L. MORGAN,
Assistant Secretary of the Treasury.

[FR Doc.73-19479 Filed 9-12-73;8:45 am]

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 1030]

[Docket No. AO361-A9]

MILK IN THE CHICAGO REGIONAL MARKETING AREA

Notice of Recommended Decision and Opportunity to File Written Exceptions

Correction

In FR Doc. 73-18669 appearing at page 23796 of the issue for Tuesday, September 4, 1973, make the following changes:

1. In the last line of § 1030.80(c)(1)(ii), the reference to "(b)(1)(i)", should read "(c)(1)(i)".

2. In the last two lines of § 1030.80(c)(2)(ii), the reference to "(b)(2)(i) of this paragraph" should read "(c)(2)(i) of this section".

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Social Security Administration

[20 CFR, Part 405]

[Regs. No. 5]

FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

Principles of Reimbursement for Provider Costs and for Services by Hospital-Based Physicians

Notice is hereby given pursuant to the Administrative Procedure Act (5 U.S.C. 552 et seq.) that the regulations set forth in tentative form are proposed by the Acting Commissioner of Social Security, with the approval of the Secretary of Health, Education, and Welfare. Pursuant to section 233 of the Social Security Amendments of 1972 (P.L. 92-603), the proposed amendments to Subpart D of Regulations No. 5 of the Social Security Administration (20 CFR Part 405) would provide that where the provider's customary charges for services are lower than its reasonable cost for such services, payment to such a provider shall not exceed its customary charges. Public providers, that is, providers operated by Federal, State, or local Government agencies or instrumentalities, will, however, be reimbursed on the basis of their reasonable costs if they render services free of charge or at a nominal charge.

Prior to the final adoption of the proposed regulations, consideration will be given to any data, views, or arguments pertaining thereto which are submitted in writing in triplicate to the Commissioner of Social Security, Department of Health, Education, and Welfare Building, Fourth and Independence Avenue SW., Washington, D.C. 20201, on or before October 15, 1973.

Copies of all comments received in response to this notice will be available for public inspection during regular business hours at the Washington Inquiries Section, Office of Public Affairs, Social Security Administration, Department of Health, Education, and Welfare, North Building, Room 4146, 330 Independence Avenue SW., Washington, D.C. 20201.

The proposed amendments are issued under the authority contained in sections 1102, 1814(b), 1833(a), 1871, 49 Stat. 647, as amended, 79 Stat. 294, as amended, 79 Stat. 302, as amended, 79 Stat. 331; 42 U.S.C. 1302, 1395 et seq.

(Catalog of Federal Domestic Assistance Program Nos. 13.800, Health Insurance for the Aged—Hospital Insurance; and 13.801, Health Insurance for the Aged—Supplementary Medical Insurance.)

Dated: July 13, 1973.

ARTHUR E. HESS,
Acting Commissioner of Social Security.

Approved September 4, 1973.

FRANK CARLUCCI,
Acting Secretary of Health, Education, and Welfare.

Regulations No. 5 of the Social Security Administration, as amended (20 CFR Part 405), are further amended as follows:

1. Paragraph (a) of § 405.401 is revised to read as follows:

§ 405.401 Introduction.

(a) Under the health insurance program for the aged, the amount paid to any provider of services—i.e., hospital, skilled nursing facility, or home health agency—for the covered services furnished to beneficiaries is required by section 1814(b) and section 1833(a)(2) of the Social Security Act to be the reasonable cost of such services. However, with respect to cost reporting periods beginning after December 31, 1972, payments to providers of services are based on the lesser of the reasonable cost of services or the customary charges to the general public for such services.

* * * * *

2. Paragraph (a) of § 405.402 is revised to read as follows:

§ 405.402 Cost reimbursement; general.

(a) In formulating methods for making fair and equitable reimbursement for

services rendered beneficiaries of the program, payment is to be made on the basis of current costs of the individual provider, rather than costs of a past period or a fixed negotiated rate. All necessary and proper expenses of an institution in the production of services, including normal standby costs, are recognized. Furthermore, the share of the total institutional cost that is borne by the program is related to the care furnished beneficiaries so that no part of their cost would need to be borne by other patients. Conversely, costs attributable to other patients of the institution are not to be borne by the program. Thus, the application of this approach, with appropriate accounting support, will result in meeting actual costs of services to beneficiaries as such costs vary from institution to institution. However, with respect to cost reporting periods beginning after December 31, 1972, payments to providers of services for services rendered health insurance program beneficiaries are based on the lesser of the reasonable cost of services or the customary charges to the general public for such services.

* * * * *

3. Paragraph (a) of § 405.451 is revised to read as follows:

§ 405.451 Cost related to patient care.

(a) *Principle.*—All payments to providers of services must be based on the reasonable cost of services covered under title XVIII of the Act and related to the care of beneficiaries. Reasonable cost includes all necessary and proper costs incurred in rendering the services, subject to principles relating to specific items of revenue and cost. However, for cost reporting periods beginning after December 31, 1972, payments to providers of services are based on the lesser of the reasonable cost of services covered under title XVIII of the Act and furnished to program beneficiaries or the customary charges to the general public for such services, as provided for in § 405.455.

* * * * *

4. The following new section is added to read as follows:

§ 405.455 Amount of payments where customary charges for services furnished are less than reasonable cost.

(a) *Principle.*—Providers of services will be paid the lesser of the reasonable cost of services furnished to beneficiaries or the customary charges made by the provider for the same services. Public providers of service rendering services free of charge or at a nominal charge will be paid fair compensation for services furnished to beneficiaries. This principle is applicable to services rendered by providers in cost reporting periods beginning after December 31, 1972.

(b) *Definitions.* — (1) *Customary charges.*—Customary charges for services rendered to beneficiaries are the charges as defined in § 405.452(d)(4). Such charges must be recorded on all bills submitted for program reimbursement. Where the provider does not actually impose such charges in the case of most patients liable for payment for its services on a charge basis or fails to make reasonable efforts to collect such charges from patients liable for payment for its services on a charge basis, customary charges for services rendered to beneficiaries shall be the charges as defined in § 405.452(d)(4) and recorded on the bills submitted for program reimbursement reduced in proportion to the ratio of the aggregate amount actually collected from patients liable for payment for services on a charge basis to the amounts that would be realized had charges consistent with the charges as defined in § 405.452(d)(4) and recorded on the bills submitted for program reimbursement been paid by or on behalf of all patients liable for payment on a charge basis.

(2) *Reasonable cost.*—For purposes of comparison with customary charges, the reasonable cost of services furnished to beneficiaries shall exclude (i) payments made to a provider as reimbursement for bad debts arising from noncollection of Medicare deductible and coinsurance amounts, (ii) amounts which represent the recovery of excess depreciation resulting from termination, or a decrease in Medicare utilization (§ 405.415(d)(3)) applicable to prior cost periods, (iii) amounts applicable to prior cost periods resulting from disposition of depreciable assets (§ 405.415(f)), and (iv) payments to funds for the donated services of teaching physicians.

(3) *Public provider.*—A public provider means any provider operated by a Federal, State, county, city, or other local Government agency or instrumentality.

(4) *Nominal charges.*—A public provider's charges are considered nominal where the aggregate charges are less than one-half of the reasonable cost of services or items represented by such charges.

(5) *New provider.*—A new provider is an institution that has operated as the type of facility for which it is certified in the program (or the equivalent thereof) at a particular location for less than 3 full years.

(c) *Aggregation of charges.*—It is appropriate that, on an aggregate basis, payments to a provider for covered services rendered beneficiaries under title XVIII should not exceed the customary charges made by the provider to the general public for the same services. In determining payments on an aggregate basis, charges for items and services and the reasonable cost of such items and services will be considered separately for Part A and Part B of title XVIII. The principle established is to be applied after the provider's charges and costs have been adjusted in accordance with the requirements set forth in paragraph (b)(2) of this section and in §§ 405.480–405.488, to exclude any amounts attributable to physicians' services not reimbursable to the provider on a reasonable cost basis and to exclude costs and charges with respect to noncovered provider services.

Example.—The reasonable cost of covered Part A services furnished to program beneficiaries by a provider for a cost reporting period is $125,000. The customary charges to these beneficiaries for these services totaled $110,000. The amount to be reimbursed this provider will be $110,000 less deductible and coinsurance amounts to be borne by program beneficiaries.

(d) *Accumulation of unreimbursed costs and carryover to subsequent periods.*—(1) *General.*—Any provider of services whose charges are lower than costs in any cost reporting period beginning after December 31, 1972, may carry forward costs attributable to program beneficiaries which are unreimbursed under the provisions of this section for the two succeeding reporting periods. Where beneficiary charges exceed reasonable cost in such subsequent periods, such previously unreimbursed amounts carried forward shall be reimbursed to the provider to the extent that such previously unreimbursed amounts carried forward, together with costs applicable to program beneficiaries in such subsequent periods, do not exceed customary charges with respect to services to program beneficiaries in such subsequent periods. If such two succeeding cost reporting periods combined include fewer than 24 full calendar months, the provider may carry forward costs unreimbursed under this section for one additional reporting period.

(2) *New provider.*—A new provider of services may carry forward for five succeeding cost reporting periods costs attributable to program beneficiaries which are unreimbursed under the provisions of this section with respect to any cost reporting period which begins after December 31, 1972, and ends on or before the last day of its third year of operation. Where beneficiary charges exceed reasonable cost in the five succeeding reporting periods, such previously unreimbursed amounts carried forward shall be reimbursed to the provider to the extent that such previously unreimbursed amounts carried forward, together with costs applicable to program beneficiaries in such subsequent periods, do not exceed customary charges with respect to services to program beneficiaries in such subsequent periods. If such five succeeding cost reporting periods combined include fewer than 60 full calendar months, the provider may carry forward costs unreimbursed under this section for one additional reporting period.

Example.—A provider begins its operations on March 5, 1971. However, it begins to participate in the Medicare program as of January 1, 1972, and reports on a calendar year basis. Since it would be subject to the application of the provision for its cost reporting period beginning with January 1, 1973, it would be permitted to accumulate any unreimbursed costs (excess of costs over its charges) incurred during this reporting period. Since this cost reporting period ends before the end of the third year of operation, its carryover period will be the succeeding five cost reporting periods ending with December 31, 1978. (Had this provider begun its operations on July 1, 1972, and become a participating provider as of the same

date (with a fiscal year ending June 30), it would have been able to accumulate any unreimbursed costs for the two cost reporting periods ending June 30, 1974, and June 30, 1975. Its carryover period would then be the five cost reporting periods ending no later than June 30, 1979, in the case of costs unreimbursed in the reporting year ending June 30, 1974, and June 30, 1980, in the case of costs unreimbursed in the reporting year ending June 30, 1975).

(3) *Segregation of Part A and Part B reimbursement.*—For the purpose of this section separate computations will be made for the respective costs met by the Part A and Part B trust funds. Thus, the carryover provision would permit recoupment of previously unreimbursed costs under one part to be recovered under that part only.

Example.—In the reporting period ending December 31, 1973, the provider's reimbursable costs attributable to covered Part A services furnished program beneficiaries were $100,000. The provider's customary charges for these services were $90,000. The provider will, therefore, be reimbursed $90,000 less any deductible and coinsurance amounts but will be permitted to carry the unreimbursed $10,000 forward for the next two succeeding reporting periods. If, in the reporting period ending December 31, 1974, the beneficiary charges for covered Part A services exceeded the reimbursable reasonable costs of such services by $10,000 or more, the provider could recover the entire $10,000 previously not reimbursed. If, however, beneficiary charges exceeded costs by $8,000, this amount sidered in computing the limit on reimburseable costs for this period. The balance of the unreimbursed amount or $2,000 would be carried over to the next reporting period. (Note that the relationship of charges and costs for Part B services is not a factor considered in computing the limit on reimburse. ment, carry forward, or subsequent reimbursement of Part A costs. Similarly, the relationship of charges and costs for Part A services is not a factor considered in computing the limit on reimbursement, carry forward, or subsequent reimbursement of Part B costs.)

(e) *Public providers.*—Fair compensation to public providers rendering services free of charge or at nominal charges, as defined in paragraph (b)(4) of this section, for the services they furnish will be the reasonable costs of covered services, as defined in this subpart.

[FR Doc.73-19388 Filed 9-12-73;8:45 am]

Social and Rehabilitation Service

[45 CFR, Part 250]

MEDICAL ASSISTANCE PROGRAM

Determination of Reasonable Charges

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 regulations implement sections 232 and 233 of P.L. 92-603 which provide for individual State determination of reasonable cost of inpatient hospital services, provided that the plan is approved by the Secretary in advance of implementation, and limit payment for inpatient hospital services to the lesser of reasonable cost or the customary charges to the general public respectively.

Prior to the adoption of the proposed regulations, consideration will be given to any comments, suggestions, or objections thereto which are submitted in writing to the Administrator, Social and Rehabilitation Service, Department of Health, Education, and Welfare, 330 Independence Avenue SW., Washington, D.C. 20201, on or before October 15, 1973. Comments received will be available for public inspection in room 5224 of the Department's offices at 330 C Street SW., Washington, D.C. on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (Area Code 202-962-4451).

(Sec. 1102, 49 Stat. 647 (42 U.S.C. 1302).)

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

Dated August 6, 1973.

JAMES S. DWIGHT, Jr.,
Administrator, Social and Rehabilitation Service.

Approved September 4, 1973.

FRANK CARLUCCI,
Acting Secretary of Health, Education, and Welfare.

Section 250.30 of Part 250, Chapter II, Title 45 of the Code of Federal Regulations is amended by redesignating subparagraphs (2) through (7) of paragraph (a) as subparagraphs (3) through (8), adding a new subparagraph (2) to paragraph (a), and revising the introduction to paragraph (b) and subparagraph (1) thereof, as set forth below:

§ 250.30 Reasonable charges.

(a) *State plan requirements.* * * *

(2) Provide for payment of the reasonable cost of inpatient hospital services as determined in accordance with methods and standards, consistent with the provisions of section 1122 of the Social Security Act for participating States, which shall be developed by the State and approved in advance by the Secretary. Under this requirement:

(i) Plans for payment of reasonable cost will be approved which adopt the title XVIII standards and principles described in 20 CFR 405.402-405.454 and 405.455 [Proposed] (excluding the inpatient routine nursing salary cost differential). However, with respect to cost reporting periods beginning after December 31, 1972, payments to hospitals for inpatient services are based on the lesser of the reasonable cost of services or the customary charges to the general public for such services in accordance with the provisions of the title XVIII regulations.

(ii) For other plans for payment of reasonable cost which States develop, criteria for approval will include:

(*a*) Incentives for efficiency and economy;

(*b*) Reimbursement on a reasonable cost basis;

(*c*) Reimbursement not to exceed that produced under available Title XVIII methods of apportionment;

(*d*) Assurance of adequate participation of hospitals and availability of hospitals services of high quality to title XIX recipients;

(*e*) Adequate documentation for evaluation of experience under the State's approved reimbursement plan.

In developing such plans, State title XIX agencies are encouraged to work closely with Title V grantees, the Social Security Administration, and other Governmental purchasers of hospital care in an attempt to achieve coordination in reimbursement methods within States.

(iii) Plans for payment of reasonable cost will not be approved under which payment for inpatient hospital services exceeds the amount which would be determined as reasonable cost using the title XVIII standards and principles described in 20 CFR 405.402-405.454 and 405.455 [Proposed] (excluding the inpatient routine nursing salary cost differential).

* * * * *

(b) *Upper limits.* The upper limits for payments for care and services under a medical assistance plan are as follows: The State agency may pay less than the upper limits. These upper limits do not apply to payments made under the State plan for deductibles and coinsurance imposed under title XVIII of the Social Security Act. Such payments may be made up to the reasonable charge under title XVIII. The upper limits with respect to any item of medical care and services provided under the State plan shall not exceed the amounts established as the ceilings for the prices of such item pursuant to nationally-imposed economic controls or limitations on the prices of goods and services, including those imposed pursuant to Executive Order 11615 of August 15, 1971, 36 F.R. 15727, or any subsequent issuance.

(1) *Inpatient hospital services.* The upper limits for payment shall not exceed the payment produced under the title XVIII standards and principles described in 20 CFR 405.402-405.454 and 405.455 [Proposed] (excluding the inpatient routine nursing salary cost differential). However, with respect to cost reporting periods beginning after December 31, 1972, payments to hospitals for inpatient services are based on the lesser of the reasonable cost of services or the customary charges to the general public for such services in accordance with the provisions of the title XVIII regulations.

* * * * *

[FR Doc.73-19389 Filed 9-12-73;8:45 am]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[14 CFR Part 37]

[Docket No. 13182; Notice No. 73-24]

DELETION OF TSO'S C18c, C24, C33, AND C61a

Notice of Proposed Rulemaking

The Federal Aviation Administration is considering amending Part 37 of the

Federal Aviation Regulations to delete § 37.128 *Position light flashers (air-carrier aircraft)—TSO C18c*, § 37.134 *Technical Standard Order C24: "Landing Flares,"* § 37.166 *Portable aircraft emergency communications equipment (for air carrier aircraft)—TSO C61a*, and § 37.194 *Position light flashers, single-circuit (for non-air-carrier aircraft)—TSO–C33*.

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to: Federal Aviation Administration, Office of the General Counsel, Attention: Rules Docket, AGC–24, 800 Independence Avenue SW., Washington, D.C. 20591. All communications received on or before November 12, 1973, will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments in the Rules Docket, for examination by interested persons.

Sections 37.128 and 37.194, TSO's C18c and C33, respectively, establish minimum performance standards for aircraft position light flashers.

Amendments 3–1 and 4b–4 to the Civil Air Regulations, Parts 3 and 4b, respectively, which became effective on April 1, 1959, deleted the requirements for the installation of position light flashers. These amendments were applicable to aircraft type certificated after April 1, 1959. Subsequently, older aircraft position light systems, which incorporated flashers, have been phased out of service. Therefore, TSO's C18c and C33 are obsolete and no longer required.

Section 37.134, TSO–C24, establishes minimum performance requirements for landing flares intended for use in civil aircraft.

Amendments 40–10 and 43–8 to the Civil Air Regulations, Parts 40 and 43, respectively, which became effective on February 13, 1958, deleted the requirement for land flares from the list of required equipment on all aircraft, except those air carrier aircraft engaged in extended overwater operations. Subsequently, Amendment 40–30, which became effective on September 21, 1961, deleted the requirement for the carriage of landing flares aboard even those aircraft which were engaged in extended overwater operations. Therefore, TSO–C24 is obsolete and no longer required.

Section 37.166, TSO–C61a, establishes minimum performance standards for portable aircraft emergency communications equipment which is required to be carried aboard air carrier aircraft.

Amendment 37–31 to FAR Part 37, which became effective on October 21, 1971, adopted § 37.200, TSO–C91, which prescribes minimum performance standards for emergency locator transmitters. This TSO is intended to supersede TSO–C61a as Amendments 25–29, 29–8, 91–95, 121–79, and 135–29 to their respective FAR Parts require that all emergency locator transmitters, except certain TSO–C61a transmitters used in U.S. registered civil aircraft after December 30, 1973, meet the performance standards of TSO–C91. Those TSO–C61a transmitters that may continue to be used after December 30, 1973, until December 30, 1975, must have been installed prior to October 21, 1971. After December 30, 1975, all emergency locator transmitters must meet the performance standards of TSO–C91. Therefore, TSO–C61a is obsolete and no longer required.

In general, the equipment covered by TSO's C18c, C24, and C33 is not in use any longer; and in the case of TSO–C61a, the equipment will shortly be phased out of service. Since the demand for this equipment is little or none at all, it is unreasonable to continue to expend funds for the FAA surveillance of the manufacturers of such products. Therefore, this proposal would delete TSO's C18c, C24, C33, and C61a. This action would result in the withdrawal of TSO authorizations issued for the manufacture of articles under those TSO's.

These amendments are proposed under the authority of sections 313(a) and 601 of the Federal Aviation Act of 1958 (49 U.S.C. 1354 and 1421), and of section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

In consideration of the foregoing, it is proposed to amend Part 37 of the Federal Aviation Regulations as set forth below:

§§ 37.128, 37.134, 37.166, 37.194 [Deleted]

Issued in Washington, D.C., on August 31, 1973.

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

[FR Doc.73–19330 Filed 9–12–73;8:45 am]

[14 CFR Part 71]

[Airspace Docket No. 73–GL–42]

TRANSITION AREAS

Notice of Proposed Alteration

The Federal Aviation Administration is considering amending Part 71 of the Federal Aviation Regulations so as to alter the transition areas at Ashland, Wisconsin; Boulder Junction, Wisconsin; Eagle River, Wisconsin; Eau Claire, Wisconsin; Grantsburg, Wisconsin; Hayward and Cable, Wisconsin; Iron Mountain, Michigan; Merrill, Wisconsin; Minneapolis, Minnesota; Prairie Du Chien, Wisconsin; Rhinelander, Wisconsin; Rice Lake, Wisconsin; Woodruff, Wisconsin; and Wausau, Wisconsin.

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 October 15, 1973, 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.

Since designation of transition areas with a floor of 1,200 feet above ground within the State of Wisconsin south of the 45° parallel, additional airways and portions of transition areas at airports have been added to the controlled airspace in Wisconsin north of the 45° parallel.

These additions, along with those previously in the area, have increased the irregularity of the controlled airspace floors. To ease the charting, and to make it easier for both the pilot and air traffic controller to know the extent of controlled airspace, we propose to extend the controlled airspace extending upward from 1,200 feet above the surface to cover the entire state. This will reduce the numerous designated airspace citations for this area to one for the state.

We also propose to reduce the floor of airways in this area that are higher than 1,200 feet above terrain to the regular 1,200 feet AGL floor.

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

1. In § 71.181 (38 FR 435), the following transition areas are amended by deleting references to that airspace extending upward from 1,200 feet above the surface:

Ashland, Wis.
Boulder Junction, Wis.
Eagle River, Wis.
Eau Claire, Wis.
Grantsburg, Wis.
Hayward and Cable, Wis.
Iron Mountain, Mich.
Merrill, Wis.
Minneapolis, Minn.
Prairie Du Chien, Wis.
Rhinelander, Wis.
Rice Lake, Wis.
Woodruff, Wis.
Wausau, Wis.

2. In § 71.181 (38 FR 435), the following transition areas are amended as indicated:

a. In Duluth, Minn., delete all after "Cloquet transition areas" and insert in place "and the State of Wisconsin";

b. In Green Bay, Wis., delete "that airspace extending upward from 5000 feet

MSL in the area bounded by V191E, V26, V217";

c. In Ironwood, Mich., add "excluding the portion which overlies the State of Wisconsin";

d. In Wisconsin, delete "south of the 45° parallel".

3. In § 71.123 (38 FR 307), the following airways are amended as follows:

a. In V129, delete "15 miles 73 miles 35 MSL";

b. In V217, delete "32 miles 39 miles 31 MSL" and "24 miles 80 miles 55 MSL".

These amendments are 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 August 21, 1973.

R. O. ZIEGLER,
Acting Director,
Great Lakes Region.

[FR Doc.73-19325 Filed 9-12-73;8:45 am]

[14 CFR Part 71]

[Airspace Docket No. 73-WE-12]

TRANSITION AREA

Notice of Proposed Designation

The Federal Aviation Administration is considering an amendment to Part 71 of the Federal Aviation Regulations that would designate a new transition area for Livermore Airport, Livermore, California.

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 Chief, Airspace and Procedures Branch, Federal Aviation Administration, 15000 Aviation Blvd., P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009. All communications received within 30 days after publication of this notice in the FEDERAL REGISTER 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, 15000 Aviation Blvd., Hawthorne, California 90260.

A new public use instrument approach procedure has been developed based on the Stockton VORTAC 255° T (238° M) radial to serve the Livermore Airport. The proposed 700 foot transition area is required to provide controlled airspace for aircraft executing the procedure while operating between 1,500 and 700 feet above the surface.

In consideration of the foregoing, the FAA proposes the following airspace action.

In § 71.181 (38 FR 435) the following transition area is added:

LIVERMORE, CALIF.

That airspace extending upward from 700 feet above the surface bounded by a line beginning at latitude 37°44'09" N., longitude 121°52'00" W., to latitude 37°48'15" N., longitude 121°40'00" W., to latitude 37°41'30" W., longitude 121°34'00" W., to latitude 37°38'00" N., longitude 121°52'00" W., thence to point of beginning.

This amendment is proposed under the authority of Sec. 307(a) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1348(a)), and of Sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Los Angeles, California, on September 4, 1973.

ROBERT O. BLANCHARD,
Acting Director, Western Region.

[FR Doc.73-19430 Filed 9-12-73;8:45 am]

Federal Highway Administration

[49 CFR Part 393]

[Docket No. MC-53; Notice No. 73-24]

AUTOMATIC DEVICES FOR REDUCING FRONT-WHEEL BRAKING EFFORT ON COMMERCIAL MOTOR VEHICLES

Notice of Proposed Rulemaking

The Director of the Bureau of Motor Carrier Safety is considering an amendment to § 393.48 of the Motor Carrier Safety Regulations (49 CFR 393.48) which would make it lawful to operate in interstate or foreign commerce a motor vehicle having an air brake system equipped with an automatic device which reduces front wheel braking effort under certain circumstances even when the vehicle is not operating under adverse road conditions.

This proceeding stems from a petition for rulemaking filed by Mack Trucks, Inc., a manufacturer of commercial motor vehicles. In the petition, it is said that § 393.48 as presently written could be construed to prohibit the use of automatic front axle brake pressure proportioning devices which produce reduced brake pressure during normal braking applications and full brake pressure during panic stops. Installation of devices of this type in air brake systems is technically beneficial, the petition says, because it enables the vehicle to conform to the new higher performance standards of Motor Vehicle Safety Standard No. 121 (49 CFR 571.121). Standard No. 121 establishes performance requirements for braking systems on new motor vehicles equipped with air brake systems, including maximum stopping distance requirements. A braking system which enables a vehicle to conform to the Standard's stopping distance requirements in a "panic" application of the brakes would ordinarily overbrake the front axle of the vehicle during normal stopping conditions. Unless the vehicle is equipped with a device for reducing the front-wheel braking effort during normal stops, the petitioner says, the brake system will suffer from faster brake lining wear, excessive braking control, and increased maintenance of the front brake system.

Accordingly, the petitioner has asked the Director to amend § 393.48 to permit a commercial motor vehicle to be equipped with a pressure proportioning device which produces reduced front-wheel brake pressure during normal operation of an air brake system regardless of road conditions. Section 393.48, in its present form, requires all brakes with which a motor vehicle is equipped to be fully operative at all times. While it permits the installation of a means for reducing or removing braking effort of the front wheels on certain vehicles, the rule restricts the use of that means to occasions when the vehicle is operating under adverse conditions, such as wet, snowy, or icy roads. Mack has asked the Director to change the rule so that the restriction against use of devices for reducing or removing braking effort during normal operations, as it applies to vehicles equipped with air brakes, will apply only to driver-controlled devices.

The Director has concluded that the petition contains adequate justification for rule making, and that he should give all interested persons the opportunity to comment on a change in § 393.48 along the lines suggested by the petitioner. Accordingly, he proposes to revise § 393.48 of the Motor Carrier Safety Regulations (Subchapter B in Chapter III of title 49, CFR) to read as follows:

§ 393.48 Brakes to be operational.

(a) *General rule.*—Except as provided in paragraphs (b) and (c) of this section, all brakes with which a motor vehicle is equipped must at all times be capable of operating.

(b) *Devices for reducing front-axle braking effort of certain vehicles.*—(1) *Vehicles equipped with air-mechanical brakes and manufactured on or after September 1, 1974.*—The braking system of a bus, truck, or truck tractor equipped with an air-mechanical brake system and manufactured on or after September 1, 1974 may have an automatic device to reduce the braking force upon the vehicle's front wheels or front axle when the service brake or emergency brake is applied. The device must not—

(i) Be operable by the driver except upon application of the control that activates the braking system; or

(ii) Reduce the braking force when the air pressure that transmits brake control application forces exceeds 70 p.s.i.; or

(iii) Prevent the pressure in the front-axle brake chamber from reaching 60 p.s.i. within 0.25 second after the first movement of the service brake control.

(2) *All other vehicles.*—The braking system of a bus, truck, or truck tractor to which paragraph (b)(1) of this section is not applicable may have a device to reduce the braking effort upon its front wheels or, in the case of a three-axle truck or truck tractor, to remove the braking effort upon its front wheels. However, the device for reducing or removing the front-wheel braking effort may be used only when the vehicle is operating under adverse road conditions such as wet, snowy, or icy roads.

(c) *Towed vehicles.*—Paragraph (a) of this section, does not apply to—

(1) A disabled vehicle being towed; or

(2) A vehicle being towed in a driveaway-towaway operation which is exempt from the rule in the introductory clause of § 393.42 under paragraph (b).

Interested persons are invited to submit written data, views, or arguments pertaining to this proposal. All comments submitted should refer to the docket number and notice number appearing at the top of this document. They should be submitted in three copies to the Director, Bureau of Motor Carrier Safety, Washington, D.C. 20590. All comments received before the close of business on November 1, 1973, will be considered before further action is taken. Comments will be available for examination in the public docket room of the Bureau of Motor Carrier Safety, Room 4136, 400 Seventh Street SW., both before and after the closing date for comments.

This notice of proposed rulemaking is issued under the authority of section 204 of the Interstate Commerce Act, as amended, 49 U.S.C. 304, section 6 of the Department of Transportation Act, 49 U.S.C. 1655, and the delegations of authority by the Secretary of Transportation and the Federal Highway Administrator at 49 CFR 1.48 and 389.4, respectively.

Issued on September 6, 1973.

ROBERT A. KAYE,
Director,
Bureau of Motor Carrier Safety.

[FR Doc.73-19440 Filed 9-12-73;8:45 am]

CIVIL AERONAUTICS BOARD

[14 CFR Part 399]

[Docket No. 25875; PSDR-37]

U.S./EUROPE CHARTER SERVICE

General Rate Policy

SEPTEMBER 7, 1973.

Notice is hereby given that the Civil Aeronautics Board proposes to amend Part 399 of the regulations to add a new policy statement concerning rates for charter services between the United States and Europe. It will be the policy of the Board to regard as prima facie unjust and unreasonable charter tariff rates below the minimum levels stated herein and to suspend and investigate such charter rates. The principal features of the proposed amendment are discussed in the attached Explanatory Statement, and the text of the proposed amendment is also attached.

Interested persons may participate in the proposed rulemaking through submission of 12 copies of written data, views, or arguments pertaining thereto, addressed to the Docket Section, Civil Aeronautics Board, Washington, D.C. 20428. All relevant material in communications received on or before October 12, 1973, will be considered by the Board before taking final action on the proposed rule. Copies of such communications will be available for examination by interested persons in the Docket Section of the Board, Room 712, Universal Building, 1825 Connecticut Avenue NW., Washington, D.C., upon receipt thereof. Responsive comments may be filed on or before October 29, 1973.

By the Civil Aeronautics Board.

[SEAL] EDWIN Z. HOLLAND,
Secretary.

Explanatory statement.—By Order 73-6-79, dated June 19, 1973, the Civil Aeronautics Board authorized the scheduled and supplemental carriers performing charter services on North Atlantic routes to discuss charter rates with a view toward reaching agreement on a minimum level of such rates. Any such agreement would be subject to governmental approval. The carriers' petition, which preceded our action, arose out of a background of intense and often destructive competition among charter operators producing a downward spiral of charter rates unrelated to the costs of providing the service.

Also in the background was an ever-increasing degree of competition between charter and scheduled services for a significant segment of the North Atlantic travel markets. This has led to the establishment of a series of extremely low fares for scheduled services, aimed at participating in this low-fare market, with a consequent depressing effect on carrier earnings. The result is a highly complex scheduled fare structure in which the normal economy fare is unduly high, and some of the promotional fares are unduly low, in relation to costs of service. It is clear, we believe, that the interests of the traveling public in good air service, both scheduled and charter, are not well served by the perpetuation of these fare and rate structures.

The scheduled and charter carriers met in July to discuss charter rates but failed to reach agreement. The IATA traffic conference to develop scheduled fares for next season is scheduled to begin its deliberations early in September 1973. We believe it is essential to inject an element of stability into the charter rate situation for the same reasons that motivated us to authorize the charter rate discussions in the first instance and so that a constructive IATA traffic conference can be conducted. We continue to believe that a recurrence of the stalemate which developed last winter would be most unfortunate.

Therefore, it is the Board's intention to review each carrier's charter tariff filing justification from an economic standpoint and to suspend and investigate those tariff filings which appear uneconomic. The Board is issuing this statement of policy to set forth the criteria we will use in the review of such tariffs. The Board does not seek a rigid, inflexible rate floor on which all or most rates would come to rest, rather we intend to forestall the effectiveness, without the most compelling justification, of charter tariff rates which appear, prima facie, to be unreasonable.

The current North Atlantic charter rate structure is characterized by substantial seasonal and direction variations in the general mileage rates [1] and even greater fluctuations in the point-to-point rates.[2] By way of example, Pan American's mileage tariff for B-707 aircraft offers rates as low as 1.94 cents per seat-mile,[3] during certain parts of the winter and rates as high as 3.06 cents per seat-mile during peak summer periods. The former is equivalent to $3.49 per plane mile and is clearly inadequate to cover fully allocated costs of service. The latter amounts to $5.51 per plane mile and more than covers fully allocated costs.

We have also reviewed a great many of the point-to-point charter rates although their extreme diversity makes it difficult to draw any meaningful pattern. Suffice it to say, we found 1972 rates as low as 1.62 cents per seat-mile applicable both eastbound and westbound, while the highs ranged to 2.61 cents eastbound and 2.13 cents westbound. Rates applicable this year show both increases and decreases from 1972 rates. It is obvious that only the highest of the point-to-point rates would cover fully allocated operating costs and provide some profit element.

For purposes of this policy statement, we have reviewed available cost data filed by U.S. supplemental air carriers.[4] The data primarily reflect costs of operations with the "stretched" DC-8 aircraft although some B-707 costs are also included. Operating costs are shown to approximate $5.00 per aircraft mile for the stretched DC-8 aircraft and $4.30 per mile for the standard DC-8 and B-707 aircraft. In terms of cost per seat-mile,[5] operating costs amount to 2.0 cents for the stretched DC-8's and 2.4 cents for

[1] These rates are stated in terms of a price per plane mile for a given type of aircraft which usually applies within an area for a specified period.

[2] The rates are stated in terms of a dollar amount for charter of a stated aircraft type between two specific points. Such rates may remain in effect for as little as one day or for longer periods.

[3] Based on 180 seats in a B-707.

[4] We consider these data as more representative of the costs of performing charters than the costs of the U.S. certificated route carriers because the latter primarily reflect the costs of operating scheduled services. See Appendix A, which is filed as part of the original document.

[5] On the basis of 250 seats for stretched aircraft and 180 seats for standard aircraft.

the B–707 and standard DC–8's. Inclusion of a return element would produce seat mile costs of about 2.6 cents for the streched DC–8 aircraft and 2.9 cents for the standard aircraft.

On the basis of the foregoing, the Board finds that North Atlantic charter rates below 2.2 cents per seat-mile for midweek charters and 2.4 cents for weekend charters* may be unjust and unreasonable and should be investigated and suspended in the absence of the most convincing economic justification. This rate is moderately above the supplemental carriers' experienced unit operating costs, namely, 2.0 cents per seat-mile. While it falls slightly below the indicated cost of the B–707 aircraft above, we give the most weight to the unit costs of stretched DC–8 services since this appears to be both an efficient and widely-used type of aircraft in North Atlantic commercial charter services. It may be contended that it is inappropriate to charge off-season charter services with fully allocated average year-around unit operating costs and that some different cost standard is warranted. Persons responding to this notice will have the opportunity to present their views on this question in their written comments.

We have also tentatively decided, subject to receipt of comments, not to structure our minimum charter rate standards on a seasonal basis. This approach will keep to the necessary minimum regulatory interference in the charter travel marketplace. It will maximize the carriers' ability to respond to legitimate market forces, e.g., tailoring seasonal price fluctuations to demand considerations, while precluding charter rates which fail to meet at least a minimum standard of reasonableness.

We believe that the normal seasonal variation in charter rates will continue to produce charter rates well above our 2.2 cent minimum. This type of seasonal variation in rates is also common in the IATA scheduled fare structure. Our minimum rate will therefore have its principal effect on off-season charter rates and on the widely fluctuating point-to-point rates. Rates now produced by the excess of supply over demand prevalent in the winter season will tend to be stabilized closer to economic levels while rates in other periods will continue to reflect the normal play of the market place. We expect the comments in response to this notice to fully develop the parties' views on our evaluation of this area.

It is our judgment that these minimums, together with the higher rates which can be expected, will produce a year-around yield approximately 2.65 cents per seat-mile and that such rates are reasonably related to the costs of providing North Atlantic charter services. We will, of course, continue to review all filings and should it appear that uneconomic rates are becoming prevalent during the peak or shoulder seasons, we will take appropriate action.

There remains for consideration the question whether a minimum charter rate should be uniform among the several types of aircraft used in those services or among configurations of greater or lesser density within a given aircraft type. We are fully aware that different aircraft have different cost characteristics, some higher and some lower. Similarly, it is obvious that a high density configuration will produce lower per-seat-mile costs than low density seating. A uniform minimum rate per seat-mile would appear to withhold from the charterer the benefits which should flow from use of a low-cost aircraft or high-density seating. On the other hand, the establishment of a higher minimum for one aircraft type than another might very seriously limit the ability of a carrier to operate the higher rated aircraft in the highly competitive North Atlantic charter markets. While the carrier operating higher cost aircraft may be unable to realize the same profits as the operator of the lower cost aircraft, it is up to that carrier to decide the extent of its participation. By the same token, it would appear inequitable to afford the operator of the more efficient, lower-cost aircraft a built-in competitive advantage in terms of a lower rate its competitor could not match.

With respect to varying seating configurations, we are providing that the minimums established herein apply to the normal economy class configuration and that seating accommodations of lesser density will bear a surcharge. We believe that this policy should tend to minimize the use of relatively less dense configurations because of the required price penalty. Similarly, we would not expect widespread use of substantially more dense seating arrangements for competitive reasons.

Accordingly, we have tentatively decided to apply the minimum rates proposed herein on a uniform basis irrespective of aircraft type or variations in seating density above the economy class standard. We would expect the comments to address this difficult area in detail.

Proposed policy statement.—It is proposed to adopt a new statement of general policy (14 CFR Part 399), as follows:

§ 399.45 Minimum charter rate levels.

It is the policy of the Civil Aeronautics Board to regard as prima facie unreasonable, for charter services between the United States and Europe, charter tariff rates below the rates per seat-mile shown below. Such rates, absent a compelling justification, will be subject to investigation and suspension.

(a) For weekday charters:

Eastbound—originations Sunday through Thursday—2.2 cents per seat mile.

Westbound—originations Monday through Friday—2.2 cents per seat mile.

(b) For weekend charters:

Eastbound—originations Friday and Saturday—2.4 cents per seat mile.

Westbound—originations Saturday and Sunday—2.4 cents per seat mile.

(c) For round trip charters, the minimum rate shall be the sum of the applicable directional minimums determined in accordance with paragraphs (a) and (b) of this section.

(d) The minimum rates established herein shall apply to services equivalent to or more dense than IATA economy class service. For less dense configurations, e.g., first class type service, a surcharge of 20 percent shall be added to the minimum rates computed in accordance with the provisions of this section.

(e) Each charter tariff shall specify the maximum number of seats available for the use of the charterer in each configuration for the type of aircraft to which each rate applies.

(f) Each tariff transmittal shall show the rate per available seat-mile and the basis for calculation.

(g) The minimum rates set forth herein shall be applied to the great circle, nonstop, distance between the point of origin of the charter flight, via any intermediate points served at the request of the charterer, and the point of termination of the charter flight.

(h) *Conditions of service.*—(1) The minimum charter rates set forth herein shall include, without additional charge, the transportation of a maximum of 44 pounds of baggage per charter passenger.

(2) The minimum charter rates set forth herein shall not include in-flight entertainment or liquor service which shall, if provided, be subject to an additional reasonable charge to be specified in the carrier's tariff.

(i) *Effective date.*—(1) These rules shall be effective to charter services performed on and after January 1, 1974.

(2) Charter contracts entered into prior to the date of this notice shall not be affected.

Statement of the Civil Aeronautics Board on North Atlantic Fares.—The Civil Aeronautics Board has repeatedly urged carriers serving North Atlantic routes to devise a fare structure more closely geared to the costs of service which will offer a simpler, less complex and thus more easily enforced structure and one that will maximize revenues in this period of rising costs. The mix of passenger traffic on the North Atlantic has changed dramatically in the last two years and it is time carriers recognized that financial and operating problems have not been, and will not be, alleviated by relying on efforts to increase traffic at the lowest fare spectrum and at the same time increasing normal fares. The concept that improving load factors at the expense of an overall reduction in yield will improve carrier profits appears highly questionable in light of present market conditions.

The United States has encouraged development and growth of charter services in order to make air service available to a broader band of potential travelers at prices

* We intend these minimum rates to be the standards against which the carriers' tariff rates will be measured, exclusive of agents' commissions, service charges, and the like. Weekdays are defined as Sunday through Thursday eastbound, and Monday through Friday westbound.

reflecting the economics of plane-load operations. The Board conceives charter operations as different in cost characteristics from scheduled operations and is convinced that those two services cannot be equally priced. Any such fallacy is compounded by the levels to which prices have fallen.

Recognizing these complementary pricing problems in air transportation, the Board has authorized organized carrier efforts to establish minimum charter rate levels in order to preserve the availability of this important service, by both charter and route carriers. The Board urges continuation of efforts in this regard in the interest not only of the charter service, but scheduled services as well. In this connection, the Board is concurrently issuing a proposed statement of policy that it will regard as prima facie unjust and unreasonable, charter rates below the minimum rates specified therein and that such rates will be subject to investigation and suspension absent a compelling economic justification.

The Board recognizes, if it does not accept, the scheduled carrier view that scheduled fares must be closely related to charter prices. A reasonable margin is required by cost differences between the two services.

We repeat our view that the lower ranges of scheduled promotional fares should be both increased and the applicable conditions of availability tightened. Increases in economy fares are not, in our opinion, justified by costs and such action coupled with continuation of broadly available, low level excursion and other promotional fares serve only to dilute yield without commensurate increases in net revenue.

The level of the 22–45 day excursion fare in particular should be raised if such fare is continued at all. Consolidation of existing excursion fares at an increased level will not provide an acceptable alternative as the broadened availability will negate most of the increase in level.

The Board remains convinced that charter service offers the greater price bargain for large group travel. Conversely, the scheduled services offer advantages in frequency and regularity of service which, coupled with the inevitable higher costs of such services, require higher fare levels than charters. Scheduled inclusive tour service can, of course, be economically justified. However, loosely defined groups moving on scheduled service at levels approaching charter prices merely dilute revenues and invite illegalities.

The Board strongly urges carrier efforts to abate yield erosion through limitations on allowed circuity and limitations and charges for stopovers.

Notwithstanding the cross currents of competitive pricing of scheduled service vis-a-vis charter service, the Board will be disposed to withhold approval of any IATA agreement which further raises normal economy fares; fails to materially increase the 22 to 45 excursion fare; and fails to eliminate unjustly discriminatory fares.

[FR Doc.73-19534 Filed 9-12-73;8:45 am]

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 180]

Dimethyl Tetrachloroterephthalate

Tolerances and Exemptions for Pesticide Chemicals in or on Raw Agricultural Commodities

Dr. C. C. Compton, Coordinator, Interregional Research Project No. 4, State Agricultural Experiment Station, Rutgers University, New Brunswick, N.J. 08903, on behalf of the IR-4 Technical Committee and the Agricultural Experiment Stations of Massachusetts, New Hampshire, and Wisconsin submitted a petition (PP 3E1388) proposing establishment of a tolerance for combined residues of the herbicide dimethyl tetrachloroterephthalate and its metabolites monomethyl tetrachloroterephthalate and tetrachloroterephthalic acid (calculated as dimethyl tetrachloroterephthalate) in or on the raw agricultural commodity rutabagas at 2 parts per million.

Based on consideration given data submitted in the petition and other relevant material, it is concluded that:

1. The herbicide is useful for the purpose for which the tolerance is proposed.

2. There is no reasonable expectation of residues in eggs, meat, milk, or poultry, and § 180.6(a)(3) applies.

3. The proposed use will protect the public health.

4. Dimethyl tetrachloroterephthalate is a more appropriate chemical name for the subject herbicide than the established name of dimethyl 2,3,5,6-tetrachloroterephthalate.

Cosmetic Act (sec. 408(e), 68 Stat. 514; 21 U.S.C. 346a(e)), the authority transferred to the Administrator of the Environmental Protection Agency (35 FR 15623), and the authority delegated by the Administrator to the Deputy Assistant Administrator for Pesticide Programs (36 FR 9038), it is proposed that § 180.185 be amended by revising the heading, introductory paragraph, and the paragraph, "2 parts per million * * *" to read as follows:

§ 180.185 Dimethyl tetrachloroterephthalate; tolerances for residues.

Tolerances for combined residues of the herbicide dimethyl tetrachdoroterephthalate and its metabolites monomethyl tetrachloroterephthalate and tetrachloroterephthalic acid (calculated as dimethyl tetrachloroterephthalate) are established as follows:

* * * * *

2 parts per million in or on collards, field beans (dry), kale, lettuce, mung beans (dry), peppers, pimentos, potatoes, rutabagas, snap beans (succulent), southern peas (black-eyed peas), soybeans, strawberries, sweetpotatoes, turnips, and yams.

* * * * *

Any person who has registered or submitted an application for the registration of an economic poison under the Federal Insecticide, Fungicide, and Rodenticide Act containing any of the ingredients listed herein may request, on or before October 15, 1973, that this proposal be referred to an advisory committee in accordance with section 408(e) of the act.

Interested persons may, on or before October 15, 1973, file with the Hearing Clerk, Environmental Protection Agency, Room 3902-A, 4th and M Streets SW., Waterside Mall, Washington, D.C. 20460, written comments (preferably in quintuplicate) regarding this proposal. Comments may be accompanied by a memorandum or brief in support thereof. All written submissions made pursuant to this proposal will be made available for public inspection at the Office of the Hearing Clerk.

Dated September 7, 1973.

HENRY J. KORP,
Deputy Assistant Administrator for Pesticide Programs.

[FR Doc.73-19458 Filed 9-12-73;8:45 am]

DEPARTMENT OF TRANSPORTATION

United States Coast Guard

[33 CFR Part 117]

[CGD 73-203P]

DRAWBRIDGE OPERATION REGULATIONS

Genesee River, N.Y.

At the request of Monroe County, New York, the Coast Guard is considering amending the regulations for the Stutson Street drawbridge across the Genesee River to permit closed periods during morning and evening peak vehicular traffic periods. The draw is presently required to open on signal. This is being considered because of a substantial increase in vehicular traffic. It is also proposed to delete the regulations for the Penn Central railroad bridge contained in § 117.190(f)(15) and include these regulations in this section.

Interested persons may participate in this proposed rulemaking by submitting written data, views, or arguments to the Commander (oan), Ninth Coast Guard District, 1240 East 9th Street, Cleveland, Ohio 44199. Each person submitting comments should include his name and address, identify the bridge, and give reasons for any recommended change in the proposal. Copies of all written communications received will be available for examination by interested persons at the office of the Commander, Ninth Coast Guard District.

The Commander, Ninth Coast Guard District, will forward any comments received before October 16, 1973, with his recommendations to the Chief, Office of Marine Environment and Systems, who will evaluate all communications received and take final action on this proposal. The proposed regulations may be changed in the light of comments received.

In consideration of the foregoing, it is proposed that Part 117 of Title 33 of the Code of Federal Regulations, be amended by:

1. Adding a new § 117.709 immediately after § 117.708 to read as follows:

§ 117.709 Genesee River, Rochester, N.Y., Stutson Street and Penn Central railroad bridges.

(a) The owners of or agencies controlling these drawbridges shall provide the necessary tenders and the proper

mechanical appliances for the safe, efficient openings of the draws.

(b) Trains, vehicles, or pedestrians shall not stop on these drawbridges for the purpose of delaying its opening, nor shall vessels be operated so as to hinder or delay the operation of the draws. All passages over or through these drawbridges shall be prompt to prevent delay to either land or water traffic.

(c) The draw of the Penn Central railroad bridge shall open on signal from April 1 through December 15. From December 16 through March 31 the draws shall open on signal if at least 12 hours notice is given.

(1) The draw of the Stutson Street bridge need not open for the passage of vessels from April 1 through December 15 from 7 a.m. to 9 a.m. and 4 p.m. to 6 p.m., Monday through Friday, except Federal holidays. At all other times from April 1 through December 15, including Federal holidays, the draw shall open on signal. From December 16 through March 31 the draws shall open on signal if at least 12 hours notice is given.

(d) Signals: (1) *Opening signal.*—One long blast followed by one short blast of a whistle, horn, siren, or by shouting.

(2) *Acknowledging signals.*—(i) When the draw can be opened, same as opening signal.

(ii) When the draw cannot be opened or is open and must be closed—4 short blasts, repeated at regular intervals until acknowledged by the vessel sounding the same signal. As soon as the draw can be opened again, the draw tender shall sound the opening signal.

(e) Clearance gauges, of a type approved by the Commandant, shall be installed on the upstream and downstream sides of each drawbridge by and at the expense of the owner of or agency controlling the bridge and such gauges shall be kept in good repair and legible condition.

(f) The following provisions shall not relieve the owner of or agency controlling a drawbridge from opening the draw for the passage of vessels in accordance with paragraphs (a) through (e) of this section.

(1) The draw tender is not required to open the draw when such opening is needed only to provide additional clearance for vessels with appurtenances unessential to navigation of the vessel, or with appurtenances essential to navigation but which may be altered by hinging, telescoping, collapsing, or otherwise, so as to require no greater clearance than the highest fixed and essentially unalterable point of the vessel.

(2) Appurtenances unessential to navigation include but are not limited to fishing outriggers, radio antennae which are or can reasonably be made flexible or collapsible, television antennae, false stacks, and masts purely for ornamental purposes. Appurtenances unessential to navigation do not include radar antennae, flying bridges, sailboat masts, piledriver leads, spud frames on hydraulic dredges, drilling derricks, derrick substructures and/or buildings, cranes on drilling or construction vessels, or other items of permanent and fixed equipment clearly necessary to the intended use of the vessel.

(3) Owners of or agencies controlling drawbridges shall report to the District Commander in charge of the locality the names of any vessels causing bridge openings considered to be in violation of this paragraph. The District Commander may at any time cause an inspection to be made of any craft so reported and is empowered to decide in each case whether or not the appurtenances are unessential to navigation. If the District Commander decides a vessel has appurtenances unessential to navigation, he shall notify the vessel owner of his decision, specifying a reasonable time for making necessary alterations. If the vessel owner is aggrieved by the decision of the District Commander, he may within 30 days after receipt of the request to perform necessary alterations appeal the decision to the Commandant in writing. If the Commandant rules that an appurtenance is unessential to navigation, the District Commander shall again specify to the vessel owner a reasonable time for making necessary alterations to the appurtenance, and after the expiration of the time specified, any operation of the vessel in such a manner as to require drawbridge openings shall be deemed in violation of the regulations of this paragraph unless the necessary alterations shall have been made.

§ 117.190 [Amended]

2. Deleting § 117.190(f)(15).

(Sec. 5, 28 Stat. 362, as amended, sec. 6(g)(2), 80 Stat. 937; 33 U.S.C. 499, 49 U.S.C. 1655(g)(2); 49 CFR 1.46(c)(5), 33 CFR 1.05-1(c)(4).)

Dated September 10, 1973.

W. M. BENKERT,
Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Environment and Systems.

[FR Doc.73-19433 Filed 9-12-73;8:45 am]

Notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[Order 127; Rev. 1]

CASUALTY LOSSES

Certain Elections; Extension of Time

1. By virtue of the authority granted to the Commissioner of Internal Revenue under 26 CFR 1.9100, with respect to granting extensions of time for making certain elections, there is hereby delegated to each Regional Commissioner, District Director and Service Center Director, the authority to grant reasonable extensions of time (not to exceed a total of 240 days) for changing an election made under section 165(h) of the Internal Revenue Code of 1954 and 26 CFR 1.165–11(e) beyond the date that such election becomes or became irrevocable. This date is the later of (1) 90 days after the date on which the election was made, or (2) March 6, 1973, which is 90 days after the date the final regulations under section 165(h) were published.

2. When appropriate, each Regional Commissioner or District Director may exercise this authority by granting a single extension of time covering a group of taxpayers similarly situated.

3. This authority may not be redelegated.

4. This order supersedes Delegation Order No. 127, issued February 23, 1973.

Issue date September 4, 1973.

Effective date September 4, 1973.

[SEAL] DONALD C. ALEXANDER,
Commissioner.

[FR Doc.73-19480 Filed 9-12-73;8:45 am]

Office of the Secretary

POLYPROPYLENE STRAPPING FROM JAPAN

Antidumping; Determination of Sales at Not Less Than Fair Value

SEPTEMBER 10, 1973.

On July 17, 1973, there was published in the FEDERAL REGISTER a "Notice of Tentative Negative Determination" (38 FR 19054), that polypropylene strapping from Japan is not being, nor is likely to be, sold at less than fair value within the meaning of section 201(a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)) (referred to in this notice as "the Act").

The statement of reasons for the tentative determination was published in the above-mentioned notice and interested parties were afforded an opportunity to make written submissions and to present oral views in connection with the tentative determination.

No written submissions or requests to present oral views having been received, I hereby determine that, for the reasons stated in the tentative determination, polypropylene strapping from Japan is not being, nor is likely to be, sold at less than fair value (sections 201(a) of the Act; 19 U.S.C. 160(a)).

This determination is published pursuant to section 201(c) of the Act (19 U.S.C. 160(c)) and section 153.33(b), Customs Regulations (19 CFR 153.33 (b)).

[SEAL] EDWARD L. MORGAN,
Assistant Secretary of the Treasury.

[FR Doc. 73-19487 Filed 9-12-73;8:45 am]

DEPARTMENT OF DEFENSE

Department of the Army

LAUREL RIVER LAKE, KENTUCKY

Joint Order Interchanging Administrative Jurisdiction of Department of the Army Lands and National Forest Lands

Correction

In FR-Doc. 73-18181 appearing at page 22987 in the issue of Tuesday, August 28, 1973, make the following changes in Exhibit A:

1. In the first line of Segment 7, insert "705" immediately after "704".

2. Delete the first four numbers in the last line of Segment 9 and insert in lieu thereof the following: "923, 924, 925, and 926".

Department of the Navy

SECRETARY OF THE NAVY AUDIT ADVISORY COMMITTEE

Notice of Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92-463 (1972)), notice is hereby given that, on Monday, September 24, 1973, a meeting of the Secretary of the Navy Audit Advisory Committee will be held at 7:30 a.m. at the Cavalier Oceanfront Hotel, 42d Street at the Oceanfront, Virginia Beach, Virginia.

The agenda will consist of discussion of information-system-development auditing, employee mobility, expansion of professional disciplines, audit utilization, audit followup, and approaches to automatic-data-processing auditing. The public is invited to attend the meeting.

Dated September 6, 1973.

H. B. ROBERTSON, Jr.,
Rear Admiral, JAGC, U.S. Navy Acting Judge Advocate General.

[FR Doc.19463 Filed 9-12-73;8:45 am]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA 566]

CALIFORNIA

Proposed Withdrawal and Reservation of Lands

SEPTEMBER 5, 1973.

The Forest Service, U.S. Department of Agriculture, has filed an application Serial No. CA 566 for the withdrawal of national forest lands described below from appropriation under the mining laws (30 U.S.C., Ch. 2), but not from leasing under the mineral leasing laws, subject to valid existing rights.

The lands are located within the Six Rivers National Forest and application was made to withdraw the lands from mining in order to protect their value for present and future public purposes.

On or before October 15, 1973, all persons who wish to submit comments, suggestions, or objections with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management, U.S. Department of the Interior, Room E-2841 Federal Office Building, 2800 Cottage Way, Sacramento, California 95825.

The Department's regulations provide that the authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the lands and their resources.

The authorized officer will also prepare a report for consideration by the Secretary of the Interior who will determine whether or not the lands will be withdrawn as requested by the applicant agency. He will also undertake negotiations with the applicant agency with the view of adjusting the application to reduce the area to the minimum essential to meet the applicant's needs, to provide for the maximum concurrent utilization of the lands for purposes other than the applicant's, to eliminate lands needed for purposes more essential than the applicant's, and to reach agreement on the

concurrent management of the lands and their resources.

The determination of the Secretary on the application will be published in the FEDERAL REGISTER. A separate notice will be sent to each interested party of record.

If circumstances warrant, a public hearing will be held at a convenient time and place, which will be announced.

The lands involved in the application are:

HUMBOLDT MERIDIAN

SIX RIVERS NATIONAL FOREST

T. 3 S., R. 7 E.,
Sec. 16, Lot 2.

The area described aggregates 40.16 acres in Trinity County, California.

WALTER F. HOLMES,
Chief, Branch of Lands and Minerals Operations.

[FR Doc.73-19461 Filed 9-12-73;8:45 am]

SALEM DISTRICT ADVISORY BOARD

Notice of Field Tour

Notice is hereby given that the Salem District Advisory Board will conduct a field tour on September 25, 1973. The tour group will leave from the Bureau of Land Management district office, 3550 Liberty Road, South, Salem, Oregon at 9 a.m. and return about 4:30 p.m.

The purpose of the tour is to view and discuss roadside cleanup along newly constructed roads in the Willamina-Agency Creek area.

The tour will be open to the public. Transportation and lunch will be available to accommodate 40 people. In addition to discussions of the agenda topic by board members, there will be time for brief statements by nonmembers. Persons wishing to make oral statements should so advise the chairman or cochairman prior to the tour, to aid in scheduling the time available. Any interested person may file a written statement for consideration by the board by sending it to the chairman, in care of the cochairman: Salem District Manager, P.O. Box 3227, Salem, Oregon 97302.

PAUL M. SANGER,
Acting Salem District Manager.

SEPTEMBER 5, 1973.

[FR Doc.73-19462 Filed 9-12-73;8:45 am]

GRAND JUNCTION DISTRICT GRAZING ADVISORY BOARD

Notice of Meeting

Notice is hereby given that the Grand Junction District Grazing Advisory Board will hold a meeting September 12, 1973, beginning at 9:30 a.m. in Room 114, Federal Building, Grand Junction, Colorado.

The agenda for the meeting will be the consideration of proposals to reprecinct the Grazing District Advisory Board and recommending action thereon. Items to be brought before the Board for informational purposes will include access, wild and scenic river proposal and any other items appropriate.

The meeting will be open to the public. Those members of the public wishing to make an oral statement should advise the Advisory Board Chairman, Robert F. Burford, c/o Bureau of Land Management, P.O. Box 1509, Grand Junction, Colo. 81501, prior to the meeting. Oral statements will be heard at 1 p.m. Written statements may also be filed with Mr. Burford for consideration.

CHARLES W. LUSCHER,
Acting State Director.

[FR Doc.73-19442 Filed 9-12-73;8:45 am]

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

[Notice of Designation A023]

WASHINGTON

Designation of Emergency Areas

The Secretary of Agriculture has found that a general need for agricultural credit exists in Okanogan County, Washington.

The Secretary has further found that such general need for agricultural credit existing in this area cannot be met temporarily by private, cooperative, or other responsible sources at reasonable rates and terms for loans for similar purposes and periods of time, and that the need for such credit in such area is the result of a natural disaster consisting of an abrupt change from mild fall temperatures to low winter temperatures without snow cover protection and the lack of winter snow which was followed by a dry spring and summer. The resulting freeze and drought damage occurred during the incidence period of November 1972 through August 1973.

Therefore, the Secretary has designated this area as eligible for Emergency loans, pursuant to the provisions of the Consolidated Farm and Rural Development Act, as amended by Public Law 93-24, and the provisions of 7 CFR 1832.3(b) including the recommendation of Governor Daniel J. Evans that such designation be made.

Applications for Emergency loans must be received by this Department prior to October 29, 1973, for physical losses and prior to May 30, 1974, for production losses, except that qualified borrowers who received initial loans pursuant to this designation may be eligible for subsequent loans. The urgency of the need for loans in the designated area makes it impracticable and contrary to the public interest to give advance notice of proposed rule making and invite public participation.

Done at Washington, D.C., this 7th day of September 1973.

FRANK B. ELLIOTT,
Administrator,
Farmers Home Administration.

[FR Doc.73-19473 Filed 9-12-73;8:45 am]

Forest Service

MULTIPLE USE PLAN ON THE CEDAR/BASSETT PLANNING UNIT

Notice of Availability of Draft Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Forest Service, Department of Agriculture, has prepared a draft environmental statement for the Multiple Use Plan on the Cedar/Bassett Planning Unit, Forest Service report number USDA-FS-DES (Adm) 74-27.

The environmental statement concerns a proposed implementation of a revised Multiple Use Plan for the Cedar/Bassett Planning Unit, Gardiner Ranger District, Gallatin National Forest in Park County, Montana. Approximately 31,100 acres, 5,700 acres of which are private lands, are affected. The inventory and analysis were done to the most intense level currently used by the Forest Service. This plan provides the District Ranger with a detailed management prescription for the Unit. The Planning Unit is subdivided into four subunits (management units) which contain similar resource problems, opportunities, and capabilities.

This draft environmental statement was filed with CEQ on August 29, 1973.

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, Northern Region, Federal Bldg., Missoula, Montana 59801.

USDA Forest Service, Gallatin National Forest, Federal Building, P.O. Box 130, Bozeman, Montana 59715.

A limited number of single copies are available upon request to Forest Supervisor Lewis E. Hawkes, Gallatin National Forest, P.O. Box 130, Bozeman, Montana 59715.

Copies are also available from the National Technical Information Service, U.S. Department of Commerce, Springfield, Virginia 22151. Please refer to the name and number of the environmental statement above when ordering.

Copies of the environmental statement have been sent to various Federal, state, and local agencies as outlined in the CEQ guidelines.

Comments are invited from the public, and from state and local agencies which are authorized to develop and enforce environmental standards, and from Federal agencies having jurisdiction by law or special expertise with respect to any environmental impact involved for which comments have not been requested specifically.

Comments concerning the proposed action and requests for additional information should be addressed to Forest Supervisor Lewis E. Hawkes, Gallatin National Forest, P.O. Box 130, Bozeman, Montana 59715. Comments must be received by October 13, 1973, in order to

be considered in the preparation of the final environmental statement.

PHILIP L. THORNTON,
Deputy Chief, Forest Service.

SEPTEMBER 6, 1973.

[FR Doc.73-19497 Filed 9-12-73;8:45 am]

BURNT FORK PLANNING UNIT; MULTIPLE USE PLAN

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 Multiple Use Plan—Burnt Fork Planning Unit, Forest Service Report Number USDA-FS-FES (Adm.) 73-38.

The environmental statement concerns the proposed implementation of a revised Multiple Use Plan for the Burnt Fork Planning Unit, Stevensville Ranger District, Bitterroot National Forest, Ravalli County, Montana. About 50,000 acres of National Forest land are affected. The planning unit is divided into 13 subunits (management units) of similar resource potential and limitations to management. Significant values, management direction, and specific statements to guide land management have been developed for each subunit.

The final environmental statement was filed with CEQ on August 28, 1973.

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
Northern Region
Federal Building, Room 3077
Missoula, Montana 59801

USDA, Forest Service
Bitterroot National Forest
316 North Third Street
Hamilton, Montana 59840
USDA, Forest Service
Stevensville Ranger District
North Main Street
Stevensville, Montana 59870

A limited number of single copies is available upon request to:

Orville L. Daniels, Forest Supervisor
Bitterroot National Forest
316 North Third Street
Hamilton, Montana 59840

Frank Salomonsen, District Ranger
Stevensville Ranger District
North Main Street
Stevensville, Montana 59870

Copies are also available from the National Technical Information Service, U.S. Department of Commerce, Springfield, Virginia 22151. Please refer to the name and number of the environmental statement when ordering.

Copies of the environmental statement have been sent to various Federal, State, and local agencies as outlined in the Council on Environmental Quality Guidelines.

PHILIP L. THORNTON,
Deputy Chief, Forest Service.

SEPTEMBER 6, 1973.

[FR Doc.73-19511 Filed 9-12-73;8:45 am]

FOX UNIT-SIX RIVERS NATIONAL FOREST; LAND USE PLAN

Availability of Draft Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Forest Service, Department of Agriculture, has prepared a draft environmental statement for the Land Use Plan, Fox Unit, Six Rivers National Forest, California. USDA-FS-DES (Adm.) 74-25.

The environmental statement concerns a proposed land use management plan for the 30,000 acres of National Forest lands known as the Fox Unit of the Gasquet Ranger District, Six Rivers National Forest, in Del Norte County, California. Fifteen thousand acres within this Unit have been inventoried as "roadless".

This draft environmental statement was filed with CEQ on August 29, 1973.

Copies are available for inspection during regular working hours at the following locations:

USDA, Forest Service
South Agriculture Bldg., Room 3230
12th St. & Independence Ave., S.W.
Washington, D.C.

Forest Service
District Ranger
Gasquet, California

Forest Supervisor's Office
Six Rivers National Forest
710 "E" Street
Eureka, Calif.

Regional Forester's Office
630 Sansome St., Room 531
San Francisco, Calif.

A limited number of single copies are available upon request from Forest Supervisor George Roether, Six Rivers National Forest, 710 E Street, Eureka, California 95501.

Copies are also available from the National Technical Information Service, U.S. Department of Commerce, Springfield, Virginia 22151. Please refer to the name and number of the environmental statement above when ordering.

Copies of the environmental statement have been sent to various Federal, state, and local agencies as outlined in the CEQ guidelines.

Comments are invited from the public, and from state and local agencies which are authorized to develop and enforce environmental standards, and from Federal agencies having jurisdiction by law or special expertise with respect to any environmental effect for which comments have not been specifically requested.

Comments concerning the proposed action, and requests for additional information should be addressed to Forest Supervisor George Roether, Six Rivers National Forest, 710 E Street, Eureka, California 95501. Comments must be received within 45 days after filing with CEQ in order to be considered in the preparation of the final environmental statement.

PHILIP L. THORNTON,
Deputy Chief, Forest Service.

SEPTEMBER 6, 1973.

[FR Doc.73-19505 Filed 9-12-73;8:45 am]

LAKE TAHOE BASIN NATIONAL FOREST LANDS PROPOSED MANAGEMENT PLAN

Availability of Draft Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Forest Service, Department of Agriculture, has prepared a draft environmental statement for the Proposed General Plan for Management of National Forest Lands in the Lake Tahoe Basin, USDA-FS-DES (Adm.) 74-23.

The proposed general management plan establishes objectives, implementing policy, and coordinating direction, and shows proposed land use decisions for managing National Forest lands in the Lake Tahoe Basin. The plan covers about 116,000 acres of land located in Alpine, El Dorado, and Placer Counties, California; and Carson City, Washoe, and Douglas Counties, Nevada. Additional overnight camping facilities to accommodate 20,000 to 30,000 persons at one time are proposed. Protection and enhancement of environmental quality is the first consideration for all activities. Land management decisions for the 5,400 acre Lincoln Creek inventoried roadless area on the Toiyabe National Forest are among those considered.

This draft environmental statement was filed with CEQ on August 29, 1973.

Copies are available for inspection during regular working hours at the following locations:

USDA, Forest Service
South Agriculture Building, Room 3230
14th Street & Independence Ave. SW.
Washington, D.C. 20250
USDA, Forest Service
California Region
630 Sansome Street, Room 531
Eldorado National Forest
100 Forni Road
Placerville, California 94111
Tahoe National Forest
Highway 49
Nevada City, California 95959
Toiyabe National Forest
Charles Mapes Bldg.
111 North Virginia Street
Reno, Nevada 89503
Lake Tahoe Basin Management Unit
1052 Tata Lane
P.O. Box 8465
South Lake Tahoe, California 95705

A limited number of single copies are available upon request to Andrew R. Schmidt, Tahoe Basin Administrator, P.O. Box 8465, South Lake Tahoe, California 95705.

Copies are also available from the National Technical Information Service,

US Department of Commerce, Springfield, Va. 22151. Please refer to the name and number of the environmental statement above when ordering.

Copies of the environmental statement have been sent to various Federal, State, and local agencies as outlined in the Council on Environmental Quality Guidelines.

Comments are invited from the public, and from State and local agencies which are authorized to develop and enforce environmental standards, and from Federal agencies having jurisdiction by law or special expertise with respect to any environmental impact involved for which comments have not been requested specifically.

Comments concerning the proposed action and requests for additional information should be addressed to Andrew R. Schmidt, Tahoe Basin Administrator, P.O. Box 8465, South Lake Tahoe, California 95705. Comments must be received within 90 days after filing with CEQ in order to be considered in the preparation of the final environmental statement.

PHILIP L. THORNTON,
Deputy Chief, Forest Service.

SEPTEMBER 6, 1973.

[FR Doc.73-19507 Filed 9-12-73;8:45 am]

MAZATZAL WILDERNESS; MINERAL EXPLORATION PROPOSAL

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 a Mineral Exploration Proposal in the Mazatzal Wilderness, USDA-FS-FES (Adm) 73-20.

The environmental statement considers probable environmental effects or impacts of a proposal for mineral exploration in the Mazatzal Wilderness.

This final environment statement was filed with CEQ on September 6, 1973.

Copies are available for inspection during regular working hours at the following locations:

USDA, Forest Service
So. Agriculture Bldg., Room 3230
14th Street & Independence Ave. SW.
Washington, D.C. 20250

USDA, Forest Service
Southwestern Region
517 Gold Avenue SW.
Albuquerque, New Mexico 87102

Tonto National Forest, 230 N. First Ave., Room 6428, Phoenix, Arizona 85025.

Copies are available from the National Technical Information Service, U.S. Department of Commerce, Springfield, Virginia 22151; and Colorado Plateau Environmental Advisory Council, P.O. Box 1389, Flagstaff, Arizona 85001. Please refer to the name and number of the environmental statement above when ordering.

A limited number of single copies are available upon request to Wm. D. Hurst, Regional Forester, Southwestern Region, U.S. Forest Service, 517 Gold Avenue SW., Albuquerque, New Mexico 87102.

Copies of the environmental statement have been sent to various Federal, State, and local agencies as outlined in the Council on Environmental Quality Guidelines.

PHILIP L. THORNTON,
Deputy Chief, Forest Service.

SEPTEMBER 6, 1973.

[FR Doc.73-19508 Filed 9-12-73;8:45 am]

PINYON-JUNIPER CHAINING PROGRAM ON NATIONAL FOREST LANDS IN THE STATE OF UTAH

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 Chaining Pinyon-Juniper on National Forest lands in the State of Utah, report number USDA-FS-FES(Adm) 73-63.

The environmental statement applies to National Forest land administered by the Intermountain Region, Forest Service, USDA in Utah. It covers the practice of chaining over pinyon-juniper trees each year on approximately 6,000 acres of land covered by dense stands and/or spreading stands of pinyon-juniper trees.

This final environmental statement was filed with CEQ on September 6, 1973.

Copies are available for inspection during working hours at the following locations:

USDA, Forest Service
South Agriculture Bldg., Room 3230
12th St. and Independence Ave. SW.
Washington, D.C. 20250

USDA, Forest Service
437 East Main Street
Vernal, Utah 84078

USDA, Forest Service
500 South Main Street
Cedar City, Utah 84720

USDA, Forest Service
Federal Bldg., Room 5022
324 25th Street
Ogden, Utah 84401

USDA, Forest Service
350 East Main Street
Price, Utah 84501

USDA, Forest Service
P.O. Box 1428
Provo, Utah 84601

USDA, Forest Service, 1525 Addison Avenue East, Twin Falls, Idaho 83301.

USDA, Forest Service, 4438 Federal Building, 125 South State, Salt Lake City, Utah 84111.

USDA, Forest Service, 170 North Main, Richfield, Utah 84701.

A limited number of single copies are available upon request to Vern Hamre, Regional Forester, USDA, Forest Service, Federal Building, 324 25th Street, Ogden, Utah 84401.

Copies are also available from the National Technical Information Service, U.S. Department of Commerce, Springfield, Virginia 22151. Please refer to name and number of the statement above when ordering.

Copies of the environmental statement have been sent to various Federal, State, and local agencies outlined in the Council on Environmental Quality Guidelines.

PHILIP L. THORNTON,
Deputy Chief, Forest Service.

SEPTEMBER 6, 1973.

[FR Doc.73-19509 Filed 9-12-73;8:45 am]

HERBICIDES IN THE STATE OF NEW MEXICO; PROPOSAL FOR VEGETATION CONTROL

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 on a proposal for vegetation control with Herbicides in the State of New Mexico, Apache, and Santa Fe National Forests, USDA-FS-FES (Adm) 73-59.

The purpose of the statement is for the control of invading sagebrush, rabbitbrush, snakeweed, and pingue. There should be no significant environmental impact, and careful site selection should minimize adverse environmental effects on water organisms and the air.

The final environmental statement was filed with CEQ on September 6, 1973.

Copies are available for inspection during regular working hours at the following locations:

USDA, Forest Service
South Agriculture Bldg., Room 3231
12th and Independence Ave. SW.
Washington, D.C. 20250

USDA, Forest Service
Southwestern Region
517 Gold Avenue SW.
Albuquerque, New Mexico 87102

Apache National Forest, Federal Building, Springerville, Arizona 85938.

Santa Fe National Forest, Federal Building, Santa Fe, New Mexico 87501.

A limited number of single copies are available upon request to William D. Hurst, Regional Forester, Southwestern Region, USDA, Forest Service, 517 Gold Avenue SW., Albuquerque, New Mexico 87102.

Copies are also available from the National Technical Information Service, U.S. Department of Commerce, Springfield, Virginia 22151; and Colorado Plateau Environmental Advisory Council, P.O. Box 1389, Flagstaff, Arizona 86001. Please refer to the name and number of the environmental statement above when ordering.

Copies of the environmental statement have been sent to various Federal, State, and local agencies as outlined in the CEQ guidelines.

PHILIP L. THORNTON,
Deputy Chief, Forest Service.

SEPTEMBER 6, 1973.

[FR Doc.73-19510 Filed 9-12-73;8:45 am]

SOUTH COTTONWOOD PLANNING UNIT; MULTIPLE USE PLAN

Availability of Draft Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Forest Service, Department of Agriculture, has prepared a draft environmental statement for the Multiple Use Plan on the South Cottonwood Planning Unit, Forest Service Report No. USDA–FS–DES(Adm) 74–24.

The environmental statement concerns the proposed implementation of a revised Multiple Use Plan for the South Cottonwood Planning Unit, Bozeman Ranger District, Gallatin National Forest in Gallatin County, Montana. Sixteen thousand four hundred and forty acres are affected. This includes 7,900 acres of National Forest, 7,627 acres of Burlington Northern, and 915 acres of other private land. The inventory and analysis were done to most intense level currently used by the Forest Service. This plan will provide the District Ranger with a detailed management prescription for the Unit.

This draft environmental statement was filed with CEQ on August 29, 1973.

Copies are available for inspection during regular working hours at the following locations:

USDA, Forest Service
South Agriculture Bldg., Room 3230
12th St. and Independence Ave. SW.
Washington, D.C. 20250

USDA, Forest Service
Northern Region
Federal Building
Missoula, Montana 59801

USDA, Forest Service
Gallatin National Forest
Federal Building
Bozeman, Montana 59715

A limited number of single copies are available upon request to Forest Supervisor Lewis E. Hawkes, Gallatin National Forest, P.O. Box 130, Bozeman, Montana 59715.

Copies are also available from the National Technical Information Service, U.S. Department of Commerce, Springfield, Virginia 22151. Please refer to the name and number of the environmental statement above when ordering.

Copies of the environmental statement have been sent to various Federal, state, and local agencies as outlined in the CEQ guidelines.

Comments are invited from the public, and from state and local agencies which are authorized to develop and enforce environmental standards, and from Federal agencies having jurisdiction by law or special expertise with respect to any environmental impact involved for which comments have not been requested specifically.

Comments concerning the proposed action and requests for additional information should be addressed to Forest Supervisor Lewis E. Hawkes, Gallatin National Forest, P.O. Box 130, Bozeman, Montana 59715. Comments must be received by 10/13/73 in order to be considered in the preparation of the final environmental statement.

PHILIP L. THORNTON,
Deputy Chief, Forest Service.

SEPTEMBER 6, 1973.

[FR Doc.73-19506 Filed 9-12-73;8:45 am]

SPANISH PEAKS MULTIPLE USE MANAGEMENT UNIT

Availability of Draft Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Forest Service, Department of Agriculture, has prepared a draft environmental statement for the Spanish Peaks Multiple Use Management Unit, Forest Service Report Number USDA–FS–DES (Adm) 74–26.

The environmental statement concerns implementing a Multiple Use Management Plan for the Spanish Peaks Management Unit, Gallatin Range District, Gallatin National Forest, Gallatin and Madison Counties, Montana. The total area is approximately 82,000 acres and includes the 50,000 acre Spanish Peaks Primitive Area. The plan is designed to provide the District Ranger with detailed management guidance for the area. This draft environmental statement was filed with CEQ August 29, 1973.

Copies are available for inspection during regular working hours at the following locations:

USDA, Forest Service South Agriculture Bldg., Room 3230 12th St. and Independence Ave. SW., Washington, D.C. 20250

USDA, Forest Service, Northern Region, Federal Building, Missoula, Montana 59801

USDA, Forest Service, Gallatin National Forest, P.O. Box 130, Federal Bldg., Bozeman, Montana 59715

A limited number of single copies are available upon request to Paul D. Weingart, Forest Supervisor, Gallatin National Forest, Post Office Box 130, Federal Bldg., Bozeman, Montana 59715.

Copies are also available from the National Technical Information Service, U.S. Department of Commerce, Springfield, Virginia 22151. Please refer to the name and number of the environmental statement above when ordering.

Copies of the environmental statement have been sent to various Federal, State, and local agencies as outlined in the Council on Environmental Quality Guidelines.

Comments are invited from the public and from State and local agencies which are authorized to develop and enforce environmental standards, and from Federal agencies having jurisdiction by law or special expertise with respect to any environmental impact involved for which comments have not been requested specifically.

Comments concerning the proposed action and requests for additional information should be addressed to Forest Supervisor Paul D. Weingart, Gallatin National Forest, P.O. Box 130, Federal Bldg., Bozeman, Montana 59715. Comments must be received by October 13, 1973, in order to be considered in the preparation of the final environmental statement.

PHILIP L. THORNTON,
Deputy Chief, Forest Service.

SEPTEMBER 6, 1973.

[FR Doc.73-19504 Filed 9-12-73;8:45 am]

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

QUINLAN MARINE ATTRACTIONS

Withdrawal of Undue Economic Hardship Application

Notice is hereby given that on September 5, 1973, Mr. Ralph Quinlan, doing business as Quinlan Marine Attractions, Lincolnton, North Carolina, was granted his request to withdraw without prejudice that portion still remaining of his application for an exemption from the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361, 86 Stat. 1027 1972)) on grounds of undue economic hardship. That portion of his application still remaining was a request for an exemption to take two Atlantic bottle-nose dolphins (*Tursiops truncatus*) for public display at the planned facility of Historic Figures, Inc., in Washington, D.C. His original request, for six dolphins, two to be displayed at the facility of Historic Figures and four at Carowinds Park, Charlotte, North Carolina, was amended on June 22, 1973, by the withdrawal without prejudice of that portion of his application relating to the taking of four dolphins for Carowinds Park. Notice of receipt of the original application was published in the FEDERAL REGISTER on May 16, 1973 (38 FR 12839), accompanied by a detailed summary and, after notice in the FEDERAL REGISTER on June 6, 1973 (38 FR 14868), a public hearing was held in Washington, D.C., on June 20, 1973. At this hearing, the Applicant made a formal motion to withdraw without prejudice that portion of his application relating to the dolphins for Carowinds Park. The Director, National Marine Fisheries Service accepted the withdrawal without prejudice on June 22, 1973, and notice of the acceptance of the request was published in the FEDERAL REGISTER on July 13, 1973 (38 FR 18701).

Copies of the original application, the letter of June 22, 1973, from the Director granting the amendment to the application, the letter of July 24, 1973, from the Applicant requesting the withdrawal of the remainder of the application, and the letter of September 5, 1973, from the Director granting permission to withdraw are available for inspection at the Office of the Director, National Marine Fisheries Service, Washington, D.C. 20235, and at the National Marine Fisheries Service Regional Offices. The Regional Offices are located at the following addresses: Southwest Region, 300 South Ferry Street, Terminal Island, California

90731, telephone 213–831–9281; Northeast Region, Federal Building, 14 Elm Street, Gloucester, Massachusetts 01930, telephone 617–281–0640; Southeast Region, Duval Building, 9450 Gandy Boulevard, St. Petersburg, Florida 33702, telephone 813–893–3141; Northwest Region, Lake Union Biulding, 1700 Westlake Avenue North, Seattle, Washington 98109, telephone 206–442–7575; Alaska Region, P.O. Box 1668, Juneau, Alaska 99801, telephone 907–586–7221.

Dated September 10, 1973.

ROBERT W. SCHONING,
Director,
National Marine Fisheries Service.

[FR Doc.73–19470 Filed 9–12–73;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

MICROWAVE OVENS

Notice of Petition To Amend the Performance Standard for Microwave Ovens

The Secretary, Department of Health, Education, and Welfare, has received from the Consumers Union of United States, Inc. a petition under 5 U.S.C. 553(e) to exercise his authority under Section 358 of the Radiation Control for Health and Safety Act to amend the performance standard for microwave ovens, 21 CFR 278.212. The following changes are petitioned:

1. Amend § 278.212(c) (21 CFR 278.212) to provide additional test conditions which simulate the normal and the most severe conditions, reasonably foreseeable, under which first purchasers will or could use microwave ovens, that is, (a) with the microwave oven operating at its maximum output and containing a load of 50±5 milliliters of tap water initially at 20±5° Centigrade placed within the cavity of the load-carrying surface provided by the manufacturer (i) at the right rear corner, (ii) at the left rear corner, (iii) at the right front corner, (iv) at the left front corner, and (v) at the center; and (b) with the microwave oven operating at its maximum output and containing no load.

2. Amend § 278.212(c) to require that measurements shall be made with the door shimmed open with two-inch wide strips of polyethylene sheet placed at as many points around the door seal and at such maximum thickness as will produce the largest gaps under which the oven will operate.

3. Amend § 278.212 to require manufacturers to affix permanently to the front exterior of all microwave ovens labels bearing the following warnings and instructions:

a. Do NOT operate oven when empty.

b. CAUTION—Microwave radiation may cause pacemaker interference. Persons with pacemaker implants should not be or remain in the same room where this microwave oven is operating.

c. After each use—(1) unplug oven, and (2) check to see that door seal and inside surfaces of door and oven cavity are clean.

d. Do NOT put face close to door window when oven is operating.

e. KEEP OUT OF THE REACH OF CHILDREN. Do NOT permit young children to operate this oven.

It is the intent of the Bureau of Radiological Health that the petition be presented to the Technical Electronic Product Radiation Safety Standards Committee at their next meeting scheduled for November 9, 1973. This Committee, a statutory advisory committee to the Secretary must be consulted prior to the establishment of standards under the Radiation Control for Health and Safety Act of 1968. Opportunity will be provided at this meeting for petitioners and others to present their views and supporting documentation. Within reasonable time constraints, there will be included ample opportunity for discussion and interchange between the Committee and other attendees.

The final decision whether or not to amend the standard will not be made by the Commissioner of Food and Drugs until recommendations of the Committee have been reviewed.

The petition and other documents submitted, including the grounds in support of the petition, are available for public review at the Office of the Hearing Clerk, Food and Drug Administration, Room 6–86, 5600 Fishers Lane, Rockville, MD 20852. A copy of the petition may be obtained by writing the Bureau of Radiological Health, RH 440, 5600 Fishers Lane, Rockville, MD 20852.

Dated September 6, 1973.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.73–19469 Filed 9–12–73;8:45 am]

[DESI 50234]

CERTAIN PREPARATIONS CONTAINING NYSTATIN AND HYDROCORTISONE; OR NYSTATIN, IODOCHLORHYDROXYQUIN, AND HYDROCORTISONE FOR TOPICAL USE

Drugs for Human Use; Drug Efficacy Study Implementation; Followup Notice

In the FEDERAL REGISTER of June 20, 1972 (37 FR 12171), the Commissioner of Food and Drugs announced (DESI 50234) the conclusions of the Food and Drug Administration following evaluation of reports received from the National Academy of Sciences-National Research Council, Drug Efficacy Study Group, on the following drugs for topical use marketed by Dome Laboratories, Division of Miles Laboratories, Inc., 400 Morgan Lane, West Haven, Conn. 06516.

NDA 50–244; Nysta-Cort Lotion (nystatin and hydrocortisone).

NDA 50–234; Nystaform-HC Ointment (nystatin, iodochlorhydroxyquin, and hydrocortisone).

NDA 50–236; Nystaform-HC Lotion (nystatin, iodochlorhydroxyquin, and hydrocortisone).

The notice stated that the drugs were regarded as possibly effective for their labeled indications relating to use in various dermotoses or as anti-infective agents. These indications have been reclassified as lacking substantial evidence of effectiveness in that no data have been submitted pursuant to the notice.

Accordingly, the Commissioner concludes that in the absence of substantial evidence of effectiveness, the above listed drugs will no longer be eligible for release. There is no antibiotic drug regulation which provides for certification of these preparations.

Any person who will be adversely affected by this action may, on or before October 15, 1973, petition for the issuance of a regulation providing for certification of the drugs for such indications. The petition must be supported by a full factual and well-documented medical analysis which shows reasonable grounds for the issuance of such regulation.

A petition for issuance of said regulation should be filed (preferably in quintuplicate) with the Hearing Clerk, Food and Drug Administration, Room 6–86, 5600 Fishers Lane, Rockville, Maryland 20852.

This notice is issued pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (secs. 502, 507, 52 Stat. 1050–51, as amended, 59 Stat. 463, as amended (21 U.S.C. 352, 357)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 2.120).

Dated September 5, 1973.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.73–19465 Filed 9–12–73;8:45 am]

[GRASP 3G0031]

STEPAN CHEMICAL CO.

Notice of Filing of Petition for Affirmation of GRAS Status

Pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 701(a), 52 Stat. 1055, 72 Stat. 1784–1786; 21 U.S.C. 321(s), 348, 371(a)) and the regulations for affirmation of GRAS status (21 CFR 121.40), published in the FEDERAL REGISTER of December 2, 1972 (37 FR 25705), notice is given that a petition (GRASP 3G0031) has been filed by Stepan Chemical Co., Edems and Winnetka, Northfield, Ill. 60093, and placed on public display at the office of the Hearing Clerk, Food and Drug Administration, proposing affirmation that sodium sulfate is generally recognized as safe (GRAS) for use as an ingredient of surfactant compounds for washing fruits and vegetables.

Interested persons may, on or before November 12, 1973, review the petition and/or file comments (preferebly in quintuplicate) with the Hearing Clerk, Food and Drug Administration, Rm. 6–86, 5600 Fishers Lane, Rockville, Md. 20852. Comments should include any available information that would be helpful in determining whether the substance is, or is not, generally recognized as safe. A copy of the petition and received comments may be seen in the

office of the Hearing Clerk, address given above, during working hours, Monday through Friday.

Dated August 31, 1973.

VIRGIL O. WODICKA,
Director, Bureau of Foods.

[FR Doc.73-19467 Filed 9-12-73;8:45 am]

[FAP 2B2799]

PENNWALT CORP.

Notice of Withdrawal of Petition for Food Additives

Pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(b), 72 Stat. 1786; 21 U.S.C. 348(b)), the following notice is issued.

In accordance with § 121.52 *Withdrawal of petitions without prejudice* of the precedural food additive regulations (21 CFR 121.52), Pennwalt Corp., 900 First Avenue, King of Prussia, PA 19406, has withdrawn its petition (FAP 2B2799), notice of which was published in the FEDERAL REGISTER of June 20, 1972 (37 FR 12172), proposing that § 121.2593 *Polyvinylidene fluoride resins* (21 CFR 121.2593) be amended in order: (1) To provide for the safe use of polyvinylidene fluoride resins as articles or components of articles intended for single use as well as repeated use in contact with food, and (2) both to increase the maximum level of total extractives in each extracting solvent to 0.2 milligram per square inch of the finished food-contact article and to establish a maximum level of fluoride extractives at 0.03 milligram per square inch of the finished food-contact article.

Dated September 6, 1973.

VIRGIL O. WODICKA,
Director, Bureau of Foods.

[FR Doc.73-19466 Filed 9-12-73;8:45 am]

Health Resources Administration

NATIONAL ADVISORY COMMITTEES

Notice of Public Meetings

Correction

The correction to FR Doc. 73-17929 (38 FR 28814, Friday, August 24, 1973) appearing on page 23430 in the issue of Thursday, August 30, 1973, correcting the date of the Health Services Research Study Section meeting, was inadvertently printed under Food and Drug Administration. The headings should read as set forth above.

ATOMIC ENERGY COMMISSION

HIGH ENERGY PHYSICS ADVISORY PANEL

Notice of Meeting

SEPTEMBER 11, 1973.

On October 3-4, 1973, there will be a meeting of the Atomic Energy Commission's High Energy Physics Advisory Panel at the Atomic Energy Commission offices, 1717 H Street NW., Washington, D.C. Below is that portion of the panel's meeting agenda which will be open to the public; practical considerations may require alterations in the agenda or schedule.

(1) *Wednesday, October 3, 1973—9:00 a.m.*—Welcome to new HEPAP members—J. Teem, J. Weisskopf.

9:15 a.m.—European Physics—V. Weisskopf.

1. Future plans.
2. Collaboration with the U.S.

11:00 a.m.—Report of Subpanel on possible U.S.-USSR collaboration—S. Drell.

(2) *Thursday, October 4, 1973—9:00 a.m.*—Reports on Status of Plans for Possible Future Facilities.

1. Recirculating Linear Accelerator—J. Rees, Stanford Linear Accelerator Center.
2. 200 Gev-Proton Intersecting Storage Accelerator System—H. Hahn, Brookhaven National Laboratory.
3. Proton-Electron-Positron Colliding Beam Facility—T. Elioff, Lawrence Berkeley Laboratory.
4. National Accelerator Laboratory Summer Study—R. Wilson, National Accelerator Laboratory.

10:30 a.m.—Discussion of future direction of U.S. High Energy Physics Program.

In addition to the above agenda items, the panel will hold executive sessions on Wednesday and Thursday afternoons (October 3-4). I have determined, in accordance with subsection 10(d) of Public Law 92-463, that the executive sessions will consist of an exchange of opinions and formulation or recommendations, the discussion of which, if written, would fall within exemption (5) of 5 U.S.C. 552(b). It is essential to close these portions of the meeting to protect the free interchange of internal views and to avoid undue interference with agency or committee operation.

The chairman of the High Energy Physics Advisory Panel is empowered to conduct the meeting in a manner that in his judgment will facilitate the orderly conduct of business.

With respect to public participation in agenda items listed above, the following requirements shall apply:

(a) Persons wishing to submit written statements on those agenda items may do so by maling 25 copies thereof, postmarked, if possible, no later than September 21, 1973, to Raymond L. Fricken, Executive Secretary, Division of Physical Research, U.S. Atomic Energy Commission, Washington, D.C. 20545. Minutes of the meeting will be kept open for 30 days for the receipt of written statements for the record.

(b) Those persons submitting a written statement in accordance with paragraph (a) above may request an opportunity to make oral statements concerning the written statement. Such requests shall accompany the written statement, and shall set forth reasons justifying the need for such oral statement and its usefulness to the panel. To the extent that the time available for the meeting permits, the panel will receive statements during a period of not more than 30 minutes at an appropriate time, chosen by the Executive Secretary between the hours of 9:00 a.m. and 10:00 a.m. on October 4, 1973.

(c) Requests for the opportunity to make oral statements shall be ruled on by the Executive Secretary of the panel, who is empowered to apportion the time available among those selected by him to make oral statements.

(d) Information as to the ruling on requests for the opportunity to present oral statements, and the time allotted, can be obtained by a prepaid telephone call on September 28, 1973 to the Executive Secretary of the panel (phone: 301-973-3376) between 9:00 a.m. and 4:30 p.m. Eastern Time.

(e) Questions may be asked by members of the Panel and its consultants.

(f) Copies of minutes of public sessions will be made available for copying, in accordance with the Federal Advisory Committee Act, on or after November 12, 1973, at the Atomic Energy Commission's Public Document Room, 1717 H Street NW., Washington, D.C., upon payment of all charges required by law.

JOHN C. RYAN,
Advisory Committee Management Officer.

[FR Doc.73-19622 Filed 9-12-73;9:24 am]

[Dockets Nos. 50-354, 50-355]

PUBLIC SERVICE ELECTRIC AND GAS CO.

Order Convening Hearing

In the matter of PUBLIC SERVICE ELECTRIC AND GAS COMPANY (Newbold Island Nuclear Generating Station Units 1 and 2).

The Atomic Safety and Licensing Board has been advised by the Regulatory Staff that all parties have conferred as requested by the Board and have agreed upon dates convenient for the reconvening of the evidentiary hearings in this proceeding.

Wherefore, *it is ordered*, in accordance with the Atomic Energy Act, as amended, and the Rules of Practice of the Commission, that evidentiary hearings in this proceeding shall convene for two successive weeks as follows:

I. Evidentiary hearings shall convene on September 24, 1973, at 1 p.m. in the Mercer Room of the Holiday Inn, 240 West State Street, Trenton, New Jersey. After the initial session of those hearings, changes in hearing room locations are necessary due to the unavailability of the room after the first two days of hearing. On Wednesday, September 26, 1973, the evidentiary session of hearings shall convene at 9 a.m. at space in Trenton to be later assigned and which will be announced on Monday, September 24, or earlier by Order if information is available. All parties and members of the public are directed to the transcript of the daily proceedings to be informed respecting changes made in the hearing room locations for the hearings.

II. Evidentiary hearings shall convene on Monday, October 1, 1973, at 1 p.m. in the Mercer Room of the Holiday Inn, 240 West State Street, Trenton, New Jersey.

Issued September 11, 1973, Germantown, Maryland.

ATOMIC SAFETY AND LICENSING BOARD,
SAMUEL W. JENSCH,
Chairman.

[FR Doc.73-19590 Filed 9-12-73;8:45 am]

CIVIL AERONAUTICS BOARD

[Docket No. 25397 et al; Order 73-9-14]

AMERICAN AIRLINES INC., ET AL.

Order Denying Petitions for Reconsideration

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 6th day of September, 1973.

Application of AMERICAN AIRLINES, INC. and FRONTIER AIRLINES, INC. for approval of route exchange agreement.

Applications and petitions of Braniff Airways, Inc., Continental Air Lines, Inc., Delta Air Lines, Inc., Hughes Air Corp. d/b/a Airwest, Texas International Airlines, Inc., Trans World Airlines, Inc., Western Air Lines, Inc.

By Order 73-6-106 (June 27, 1973) the Board set for hearing the application of American Airlines and Frontier Airlines for approval of a route exchange agreement in Docket 25397.[1] Among other things, that order denied motions by Braniff Airways, Continental Air Lines, Delta Air Lines, Hughes Air Corp., Texas International, Western Air Lines, and Trans World Airlines[2] to consolidate applications for new route authority in the Dallas/Fort Worth-Albuquerque-Las Vegas markets, and to include the revocation or suspension of Frontier's certificate in the Dallas/Fort Worth-Albuquerque-Las Vegas markets. Braniff, Continental, Texas International, and Western have filed petitions for reconsideration of that order. Delta has filed an answer in support of the petitions, and answers in opposition have been filed by American and Frontier, jointly, the Las Vegas parties, and Bureau Counsel.

The petitioners (and Delta) contend that consolidation of the applications for route authority in the Dallas/Fort Worth-Albuquerque-Las Vegas markets is required under the Ashbacker principle and as a matter of sound policy; that the proceeding should be expanded also to include the deletion of Frontier in those markets; and that inclusion of these matters would not enlarge the scope of the case substantially. They contend further, that the case involves issues that fall primarily under sections 401(g) and 401(h) rather than section 408; that the Board acted arbitrarily in granting priority to the route exchange agreement; and that elements of prejudgment are involved in that (1) by declining to consolidate the Board concluded that a grant of the pending applications would have a deleterious effect on the health of the industry, and (2) that the order gives rise to an inference that the issues of competitive disadvantage and diversion have been conclusively settled. In their answers American, Frontier, the Las Vegas parties, and Bureau Counsel take issue with each of these contentions.

Upon consideration of these pleadings, we have decided to deny the petitions for reconsideration. In Order 73-6-106 we concluded that the route exchange agreement is a proper matter for processing under section 408[3] and should be afforded priority of treatment in accordance with our longstanding policy for applications filed under that section. Similarly, on the basis of numerous judicial and Board precedents, we concluded that an expansion of this proceeding is not required under the Ashbacker principle and that section 408 applications, such as the joint request here, may be processed without consolidating applications for route authority in the markets subject to the exchange agreement. The petitions for reconsideration raise nothing that we have not heretofore considered in these respects and fail to convince us that, as a matter of law or policy, this request for approval of a route exchange should be converted into a case involving both certificate revocations and a variety of service proposals in a large area of the southwest.[4]

Moreover, the carriers urging consolidation do not suggest that the number of carriers in the market at issue should be increased at this time.[5] Thus, unless the incumbent carrier (*i.e.*, Frontier) is deleted, the market is economically preempted and it is in this posture that the route exchange agreement has been filed. In essence, the allegations of mutual exclusivity do not reflect the situation as it exists, and the Ashbacker principle cannot be construed to require that proceedings to consider the transfer of route authority must necessarily include the further issues of deletion or revocation, and alternative carrier selection.

In our order declining to consolidate the pending applications for authority in the markets in issue we reached no conclusion respecting their effect on the overall health of the industry. That order merely pointed out that the American-Frontier application contemplates the substitution of one carrier for another, without adding to the number of carriers in these markets, and is not in conflict with our present policy of caution in setting down route cases which could result in new competition which might be deleterious to the industry.[6]

Western has drawn an inference from certain language in the order[7] that the issues of competitive disadvantage and diversion have been conclusively settled and that the introduction of evidence to the contrary is a useless undertaking. It is difficult to perceive any basis for that inference in the order and suffice it to say that it is totally erroneous. Questions of competitive disadvantage and diversion have not been predetermined and evidence thereon will be considered in relation to the statutory tests to which the agreement is subject.

Continental has requested a pretrial restriction that Frontier will not be permitted to operate single plane service in the Denver-San Diego market as a result of any authority that may be transferred to it in this case. In the Additional Service to San Diego Case, Docket 18104, Continental has applied for nonstop Denver-San Diego authority. If the exchange agreement is approved in this case, Frontier would be able to provide one-stop service in that market, and Continental is concerned with the possibility that its application for non-stop authority then might be denied on the ground that the market does not need additional service. While such a restriction may be appropriate in any amended certificate that may be issued, we are not prepared to impose it as a pre-trial matter. The issues in the case include the question of what conditions, if any, should be imposed if the exchange is approved and Continental may address itself to this matter in the proceeding. Continental's request therefore is denied.

Accordingly, *it is ordered That*

The petitions of Braniff Airways, Inc., Continental Air Lines, Inc., Texas International Airlines, Inc., and Western Air Lines, Inc., for reconsideration of Order 73-6-106 be and hereby are denied.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] EDWIN Z. HOLLAND,
Secretary.

[FR Doc.73-19531 Filed 9-12-73;8:45 am]

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[1] Under that agreement, American's authority between San Diego, Phoenix, and Tucson would be exchanged for Frontiers' authority between Dallas/Fort Worth, Albuquerque, and Las Vegas.

[2] Dockets 24224 and 25576, 25515, 25553, 24327, 24233, 25582, and 25621.

[3] Sections 401(g) and 401(h) are also involved since amendments and transfers of certificates are essential to effectuate any route exchange agreement which may be approved under section 408.

[4] Notwithstanding allegations to the contrary, it is obvious that a change of this nature would expand the scope of the case substantially and delay its final disposition.

[5] At best, Texas International notes (at p. 12 of its petition) that "* * * even with Frontier's continued presence in this market, it may be possible at some future date for TXIA to successfully prosecute its application for entry * * *." But see p. 10 of that petition.

[6] With respect to that policy we note that the provisions of section 401(c) requiring disposition of route applications "as speedily as possible" must be read in conjunction with the provisions of section 102 which sets forth the Board's regulatory responsibilities. We have the right to control our own calendar and at this point in time we believe that a policy of caution in setting down route cases best meets the statutory declaration of policy.

[7] "* * * the present application contemplates only the substitution of one carrier for another in each of the markets in question, and thus does not raise the issue of adding to the number of competing carriers in any of these markets." Order 73-6-106, p. 2.

[Docket No. 25865; Order 73-9-18]

AMERICAN AIRLINES, INC.

Order of Investigation and Suspension

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 6th day of September, 1973.

Group tour organizing provisions proposed by American Airlines, Inc.

By tariff revisions[1] marked to become effective September 9, 1973, American Airlines, Inc. (American) proposes to revise its rules applicable to GIT fares between the U.S. on the one hand, Puerto Rico and the Virgin Islands on the other, by providing that an employee of the carrier may be designated to act as the Group Travel Organizer (the person responsible for the travel arrangements of the group).

In support of its proposal, American alleges that the proposal is designed to remove present tariff ambiguities and establish a clear-cut definition of a standard practice in many vacation markets; that it can be amply demonstrated that in the case of GITs there is normally no single source providing the group, but rather a series of bookings are made and ticketed by retail travel agencies; and that land portions of the package tours may be developed by tour operations or by the carriers directly. American asserts that under the proposal, it will implement carrier-initiated tours with one of its employees responsible for forming the group, coordinating the bookings, documentation, and other tariff requirements.

Delta Air Lines, Inc. (Delta) and Eastern Air Lines, Inc. (Eastern) have filed complaints against the proposal requesting that it be suspended and investigated. Delta alleges that permitting American to consolidate passengers for discount fares would result in unlawful charges which would be patently discriminatory in nature; that it is one thing for groups to form themselves and then come to the carrier to take advantage of a tariff held out as available to all such groups, but that under American's proposal it would be left largely to the discretion of the carrier when and which groups would be formed, resulting in the carrier's affording some members of the public lower group fares while not offering such fares to others.

Delta asserts that American's provision requiring that, "* * * the person responsible for the travel arrangements of the Group (hereinafter called the Group Travel Organizer) must submit to the carrier * * *" certain travel arrangements, including place of origin, stopovers, final destination and number of passengers amounts to the direct carrier submitting an application to itself, and itself being responsible for the travel arrangements, thereby casting American into conflicting dual roles.

Eastern alleges that American's proposal is not cost-justified in relation to the low GIT fares and therefore is unjust and unreasonable; that at the present time, the group organizer absorbs some of the work load associated with the planning, coordination and handling of the group, which helps to justify the very low level involved in the GIT costs that will be incurred by the carrier, and that American has not supplied an estimate of the additional costs that it will incur, nor forecasts of the traffic that would be carried under the proposal.

In answer to the complaints, American alleges that neither Delta nor Eastern challenges American's contention that the practice covered by the proposed rule is a standard one in many vacation markets, often used by many of American's competitors; that contrary to Delta's allegation, the proposed rule will not be discriminatory; that GIT groups do not form themselves but are formed through tour organizers or travel agents who then sell them to individual members of the public; that GIT fares are generally advertised to the public by both carriers and tour operators; that in many cases, GIT fares may be sold by many different operators and consolidated, either by a carrier, or by one tour operator, into one group; that American certainly does not intend to offer such fares to some members of the public, while failing to disclose them to others; and that the allegation casting American into conflicting dual roles is generally unsupported.

With respect to Eastern's complaint, American alleges that there is no requirement for extensive economic data, since the proposed tariff has no impact on American's rates or costs; that any additional marketing costs are de minimis, and are being incurred by American's competitors who currently operate as described in the proposed rule; and that Eastern neither claims that GIT fares are unprofitable nor alleges that the cost of an employee organizing the groups will have any substantial impact on carrier expenses.

Upon consideration of the tariff filing and other relevant matters the Board concludes that the proposal may be unjust, unreasonable, unjustly discriminatory, unduly preferential, unduly prejudicial, or otherwise unlawful, and should be investigated. We further conclude that the proposal should be suspended pending investigation.

We are not persuaded that the need for such a provision in the markets involved does indeed exist, or that the proposal need not be justified from an economic standpoint as American so contends.

American's allegation that the proposed rule is a standard one in many vacation markets and often used by American's competitors is somewhat oblique, and we are unaware of any similar tariff provisions in the markets involved.[2] If carriers are, in fact, organizing groups for GIT travel in these particular markets, they are clearly in violation of existing tariff provisions, and sufficient legal remedies are available to American to preclude such illegal activities by others by the initiation of enforcement proceedings.[3]

In addition, we have serious reservations regarding the economic aspects of the proposal. In view of the relatively large discounts, small group sizes, and the added possibility of further dilution from full-fare traffic involved, coupled with potential higher costs to the carrier, we would be most reluctant to approve the proposal without prior investigation.

Accordingly, pursuant to the Federal Aviation Act of 1958, and particularly sections 204(a), 403, 404, and 1002 thereof,

It is ordered, That

1. An investigation be instituted to determine whether the provisions described in Appendix A hereto,[4] and rules, regulations and practices affecting such provisions, are or will be unjust, unreasonable, unjustly discriminatory, unduly prefrential, unduly prejudicial, or otherwise unlawful, and if found to be unlawful, to determine and prescribe the lawful provisions, and rules, regulations, or practices affecting such provisions;

2. Pending hearing and decision by the Board, the provisions described in Appendix A hereto are suspended and their use deferred to and including December 7, 1973, unless otherwise ordered by the Board, and that no changes be made therein during the period of suspension except by order or special permission of the Board.

3. Except to the extent granted herein, the complaints in Dockets 25813 and 25816 are hereby dismissed;

4. The investigation ordered herein be assigned before an Administrative Law Judge of the Board at a time and place hereafter to be designated; and

5. Copies of this order be filed with the aforesaid tariff and be served upon American Airlines, Inc., Delta Air Lines, Inc., and Eastern Air Lines, Inc., which are hereby made parties to this proceeding.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] EDWIN Z. HOLLAND,
Secretary.

[FR Doc.73-19532 Filed 9-12-73;8:45 am]

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[1] Revisions to American Airline's Tariff C.A.B. No. 244.

[2] In this connection, American does not allege that its proposal is a better way of selling GIT fares or is desirable from an economic standpoint.

[3] See Order 73-4-59 dated April 12, 1973 in which Pan American agreed to cease and desist from forming passengers into groups in U.S. mainland-Hawaii markets.

[4] Appendix A is filed as part of the original document.

[Docket No. 24488; Order 73-9-12]

INTERNATIONAL AIR TRANSPORT ASSOCIATION

Order Relating to Passenger Fare Matters

Issued under delegated authority September 5, 1973.

An agreement has been filed with the Board pursuant to section 412(a) of the Federal Aviation Act of 1958 (the Act) and Part 261 of the Board's Economic Regulations between various air carriers, foreign air carriers and other carriers embodied in the resolutions of the Joint Traffic Conferences of the International Air Transport Association (IATA). The agreement, which was adopted by mail vote for intended September 15, 1973 effectiveness, has been assigned the above-designated CAB agreement number.

The agreement would amend an existing resolution governing winter group inclusive tour fares between the United States and Africa by lowering the minimum stay period from nine to seven days.

Pursuant to authority duly delegated by the Board in the Board's Regulations, 14 CFR 385.14, it is not found that the following resolution, incorporated in Agreement C.A.B. 23911, is adverse to the public interest or in violation of the Act: JT12 (Mail 818) 084pp.

Accordingly, *it is ordered* That, Agreement C.A.B. 23911 be and hereby is approved.

Persons entitled to petition the Board for review of this order pursuant to the Board's Regulations, 14 CFR 835.50, may file such petitions within ten days after the date of service of this order.

This order shall be effective and become the action of the Civil Aeronautics Board upon expiration of the above period, unless within such period a petition for review thereof is filed or the Board gives notice that it will review this order on its own motion.

This order will be published in the FEDERAL REGISTER.

[SEAL] EDWIN Z. HOLLAND,
Secretary.

[FR Doc.73-19533 Filed 9-12-73;8:45 am]

[Docket No. 23343]

EASTERN AIR LINES, INC.

Notice of Hearing

In the matter of Eastern Air Lines, Inc., deletion of Kennedy Space Center, Fla.

Notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that a public hearing in the above-entitled proceeding is assigned to be held on October 9, 1973, at 10 a.m. (local time) in Room 1031, North Universal Building, 1875 Connecticut Avenue NW., Washington, D.C., before the undersigned Administrative Law Judge. The hearing will reconvene on October 17, 1973, at 10 a.m. (local time) in Room 2201, Headquarters Building, John F. Kennedy Space Center, Kennedy Space Center, Fla.

For information concerning the issues involved and other details of this proceeding, interested persons are referred to the various documents which are in the docket of this case on file in the Docket Section of the Civil Aeronautics Board.

Dated at Washington, D.C., September 7, 1973.

[SEAL] ARTHUR S. PRESENT,
Administrative Law Judge.

[FR Doc.73-19529 Filed 9-12-73;8:45 am]

[Docket No. 25630]

SURINAAMSE LUCHTURACHT ONDERNEMING

Postponement of Prehearing Conference and Hearing

In the matter of Surinaamse Luchtvracht Onderneming N.V. (Surinam Air Cargo Corporation) Foreign air carrier permit renewal, Surinam-Miami service.

Notice is hereby given that the prehearing conference and hearing now scheduled for October 2, 1973 (38 FR 22908, August 27, 1973), is hereby postponed to October 3, 1973, at 10 a.m. (local time), in Room 911, Universal Building, 1825 Connecticut Avenue NW., Washington, D.C., before the undersigned.

Dated at Washington, D.C., September 10, 1973.

[SEAL] ALEXANDER N. ARGERAKIS,
Administrative Law Judge.

[FR Doc.73-19530 Filed 9-12-73;8:45 am]

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

CERTAIN COTTON TEXTILE PRODUCTS PRODUCED OR MANUFACTURED IN GHANA

Entry or Withdrawal From Warehouse for Consumption

SEPTEMBER 11, 1973.

On August 31, 1973, the United States Government, in furtherance of the objectives of, and under the terms of, the Long-Term Arrangement Regarding International Trade in Cotton Textiles, done at Geneva on February 9, 1962, including Article 6(c) thereof relating to non-participants, informed the Government of Ghana that it was renewing for an additional twelve-month period beginning September 13, 1973, and extending through September 12, 1974, the restraint on imports into the United States of cotton textile products in Category 22, produced or manufactured in Ghana. Pursuant to Annex B, paragraph 2, of the Long-Term Arrangement, the level of restraint for this twelve-month period is 5 percent greater than the level of restraint applicable to this category for the preceding twelve-month period.

There is published below a letter of September 11, 1973 fro mthe Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs, directing that the amount of cotton textile products in Category 22, produced or manufactured in Ghana, which may be entered or withdrawn from warehouse for consumption in the United States for the twelve-month period beginning September 13, 1973, be limited to 462,000 square yards.

SETH M. BODNER,
Chairman, Committee for the Implementation of Textile Agreements, and Deputy Assistant Secretary for Resources and Trade Assistance.

COMMISSIONER OF CUSTOMS,
Department of the Treasury,
Washington, D.C. 20229

SEPTEMBER 11, 1973.

DEAR MR. COMMISSIONER: Under the terms of the Long-Term Arrangement Regarding International Trade in Cotten Textiles done at Geneva on February 9, 1962, including Article 6(c) thereof relating to non-participants, and in accordance with the procedures of Executive Order 11651 of March 3, 1972, you are directed to prohibit, effective September 13, 1973, and for the twelve-month period extending through September 12, 1974, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Category 22, produced or manufactured in Ghana, in excess of a level of restraint for the period of 462,000 square yards.

In carrying out this directive, entries of cotton textile products in Category 22, produced or manufactured in Ghana, which have been exported to the United States from Ghana prior to September 13, 1973, shall, to the extent of any unfilled balances, be charged against the level of restraint established for such goods during the period September 13, 1972 through September 12, 1973. In the event that the level of restraint established for that period has been exhausted by previous entries, such goods shall be subject to the level set forth in this letter.

A detailed description of Category 22 in terms of TSUSA numbers was published in the FEDERAL REGISTER on April 29, 1972 (37 FR 8802), as amended on February 14, 1973 (38 FR 4436).

In carrying out the above directions, entry into the United States for consumption shall be construed to include entry for consumption into the Commonwealth of Puerto Rico.

The actions taken with respect to the Government of Ghana and with respect to imports of cotton textiles and cotton textile products from Ghana have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, being necessary to the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the FEDERAL REGISTER.

Sincerely,

SETH M. BODNER,
Chairman, Committee for the Implementation of Textile Agreements, and Deputy Assistant Secretary for Resources and Trade Assistance.

[FR Doc.73-19639 Filed 9-12-73;10:22 am]

COMMISSION ON REVISION OF THE FEDERAL COURT APPELLATE SYSTEM

REALIGNMENT OF FEDERAL JUDICIAL CIRCUITS

Notice of Hearings

SEPTEMBER 5, 1973.

The Commission on Revision of the Federal Court Appellate System will hold additional hearings in the Ceremonial Courtroom of the Customs Courthouse, Foley Square, New York City, New York, on Monday, October 1, 1973, commencing at 1 p.m.

The Commission is charged with making recommendations concerning redistricting the judicial circuits. In addition, the Commission is to study the internal procedures and structure of the Federal courts of appeal system, making such recommendations as are appropriate. Because the Commission's first report has a congressionally-mandated deadline of mid-December, priority will be given to testimony relevant to redistricting.

The hearings are open to the public and interested persons are invited to attend. Those wishing to present oral testimony should contact A. Leo Levin, Executive Director of the Commission, at 209 Court of Claims Building, 717 Madison Place NW., Washington, D.C. 20005. Phone: 202-382-2943. Written statements, in lieu of oral testimony, may also be filed with the Commission.

A. LEO LEVIN,
Executive Director.

[FR Doc.73-19483 Filed 9-12-73;8:45 am]

ENVIRONMENTAL PROTECTION AGENCY

ABBOTT LABORATORIES

Filing of Petition for Food Additive

Pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786; 21 U.S.C. 348(b)(5)), notice is given that a petition (FAP 4H5043) has been filed by Abbott Laboratories, North Chicago, IL 60064, proposing establishment of a food additive tolerance (21 CFR, Part 121) for residues of the pesticide *p*-(*N*,*N*-dichlorosulfamoyl) benzoic acid in potable water at 6 parts per million.

Dated September 7, 1973.

HENRY J. KORP,
Deputy Assistant Administrator for Pesticide Programs.

[FR Doc.73-19460 Filed 9-12-73;8:45 am]

FEDERAL MARITIME COMMISSION

CERTIFICATES OF FINANCIAL RESPONSIBILITY (OIL POLLUTION)

Notice of Certificates Issued

Notice is hereby given that the following vessel owners and/or operators have established evidence of financial responsibility, with respect to the vessels indicated, as required by Section 311(p)(1) of the Federal Water Pollution Control Act, as amended, and accordingly, have been issued Federal Maritime Commission Certificates of Financial Responsibility (Oil Pollution) pursuant to Part 542 of Title 46 CFR.

Certificate No.	*Owner/Operator and Vessels*
01014	Robert Bornhofen Reederei: *Rhodos.*
01120	Transoceanic Shipping Corporation: *George F. Getty II.*
01125	N.V. Ubem S.A.: *Kyoto; Zeebrugge.*
01421	Bibby Line Limited: *Arya Bod.*
01428	Ocean Transport & Trading Limited: *Anchises.*
01707	O. Ditlev-Simonsen Jr.: *Vikara.*
01861	BP Tanker Company, Limited: *British Norness.*
01871	F. Scinicariello: *Laura.*
01981	AB Svenska Orient Linien: *Sameland, Bardaland.*
02146	Pittston Marine Corporation: *Allied Chemical 11.*
02197	Matson Navigation Company: *Lurline, Matsonia.*
02475	Houston Barge Line, Inc.: *GTC-10, GTC-11, HBL 3013, HBL 1602, Walter Williamson, Karen, GTC-1200, GTC-2501, CHEM-1201, GTC-2502, GTC-2002, CHEM-2003, GTC-1950, GTC-2900, GTC-2503, GTC-2504, GTC-2505, GTC-2506.*
02477	American Dredging Company: *SE 103, SE 104.*
02524	The Watergate Steam Shipping Company, Limited: *Nawarth.*
02583	Pacific Inland Navigation Company, Inc.: *548.*
02715	Allied Towing Corporation: *Jeanne Marie, ATC-117.*
02728	Societe Ivoirienne de Transport Maritime: *Tonkoui, Assouba, Azaguie.*
02877	Nippon Yusen Kabushiki Kaisha: *Takasaki Maru, Takayama Maru.*
02959	Kokuyo Kaiun Kaisha, K.K.: *Izumigawa Maru, Kinokawa Maru, Hourai Maru.*
02975	Venture Shipping (Managers), Limited: *Zealand Venture, Vera Venture.*
03054	H. Schuldt: *Mexican Trader.*
03139	Offshore Marine, Limited: *Cook Shore.*
03501	Osaka Shosen Mitsui Senpaku K.K.: *Chihirosan Maru.*
03615	Indian Towing Co., Inc.: *Shawnee.*
03640	Pan Ocean Bulk Carriers, Limited: *Bum-Ah.*
03728	Ocean Drilling & Exploration Company: *Ocean King.*
03836	Splosna Plovba: *Kraigher B.*
03918	Mobil Shipping & Transportation Co.: *Mobil Engineer.*
03923	Shinwa Kaiun Kaisha, Ltd.: *Hoen Maru, Shinrei Maru.*
03988	Partenreederei M.S. "Else Reith": *Else Reith.*
03994	Partenreederei M.S. "Ida Blumenthal": *Ida Blumenthal.*
03995	Partenreederei M.S. "Johann Blumenthal": *Johann Blumenthal.*
04034	Grimaldi Compagnia Navigazione Spa: *Tiber.*
04055	Missouri Barge Line Company, Inc.: *Arthur E. Snider.*
04069	Omnium Transportation Company: *Omnium Mariner.*
04070	Frota Oceanica Brasileira S.A.: *Frotaoeste.*
04275	Intercounty Construction Corporation: *Barge #2010, Barge #2011, Barge #2051, Car Float #2033.*
04413	Leif Hoegh & Company A/S: *Hoegh Hood.*
04502	Kotoshiro Gyogyo Kabushiki Kaisha: *Kotoshiromaru No. 18, Kotoshiromaru No. 15.*
04601	American Tunaboat Association: *Cabrillo, Lucky Strike, Nautilus, Pan Pacific.*
04703	Yokkaichi Enyo Gyogyo K.K.: *Nanseimaru No. 25, Nanseimaru No. 17, Daienmaru No. 11.*
04803	Brent Towing Company, Inc.: *B 824, B 924.*
05007	Northern Transportation Company, Limited: *Matt Berry, Jock McNiven, Johnny Hope, Henry Christoffersen, NT 1514, NT 1526.*
05016	Hess Oil Virgin Islands Corporation: *Turquoise Bay.*
05090	Esso Petroleum Company, Limited: *Esso Demitia, Esso Dalriada.*
05155	Bultema Dock & Dredge Co.: *Minnesota.*
05203	The Western Company of North America: *Western Pacesetter I.*
05238	Tradax Internacional S.A.: *Captain W. D. Cargill, Carchester, Geneve,* Hamburg.
05255	Aiple Marine Company: *ACO 501, ACO 502.*
05274	Fluor Drilling Services, Inc.: *Western Offshore No. VIII.*
05500	Petroleos Mexicanos: *Manuel Avila Camacho.*
05577	Far Eastern Shipping Company: *Pskov, Kapitan Beloshapkin, Partizansk.*
05579	Black Sea Shipping Company: *Bryanskiy Mashinostroitel.*
05685	World Wide, Inc.: *Conquistador.*
05732	Tank Masters, Inc.: *Mildred.*
05754	A. E. Sorensen A/S: *Charlotte S, Annette S.*
05917	Voyager Transportation Co.: *Wolverine.*
06114	Masahei Yamamoto: *Seishumaru No. 35.*
06133	General Dynamics Corporation: *Hughes 275.*
06248	Commercial Corporation "Sovrybflot": *Trud, Alpinist, Gerakl, Nevelskiy.*
06409	India Steamship Co. Ltd.: *Indian Valour, Indian Venture, Indian Endeavour.*
06498	Federal Steam Navigation Co. Ltd.: *Wild Flamingo.*
06549	Compagnie Marocaine de Navigation: *Tizin'tichka, Zalagh.*
06570	Kristian Jebsen (U.K.) Ltd.: *Surnenes.*
06571	Luz-Armement S.A.: *Biscaya, Alaba, Guipuzkoa, Navarra.*
06818	Globus-Reederei Gmbh Hamburg: *S.A. Oranjeland.*
07178	Water Tunnel Contractors: *S-101, S-102.*
07306	Neptune Associated Lines (PTE) Ltd.: *Neptune Kiku.*
07348	K/S A/S Sea-Team & Co.: *Suecia Team.*
07362	Primorsk Shipping Company: *Stepan Vostretsov.*
07561	Gulf Atlantic Transport Corporation: *Gatco 105.*
07861	Express Marine, Inc.: *EMI #7250.*
07919	Mantomen Compania Naviera S.A.: *Irene M.*
07937	Congeladores Vigueses, S.A.: *Vigo.*
07954	Compania Valenciana de Navegacion S.A.: *Ribera.*
07959	Louisiana Dock Company, Inc.: *Steamer Gona, WF 12, Chem IV.*

Certificate No.	Owner/Operator and Vessels
08020	Maeda Kisen Kabushiki Kaisha: *Arabia Maru.*
08023	Arpa Compania Naviera S.A.: *Adam S.*
08062	Astron Trading Ltd.: *Global Unity.*
08080	Jacob Compania Naviera, S.A.: *Carbo Seahorse.*
08111	Krimac Sa Panama: *Dafra Star.*
08116	Skopi Shipping Co. Ltd.: *Cretan Life.*
08148	Domara Shipping Co.: *Stamoleon.*
08153	Sicula Partenopea Di Navigazione S.P.A.: *Ginevra.*
08169	Shipping Company Zwijndrecht NV: *Zwijndrecht.*
08187	Thorable Schiffahrtsgesellschaft de Vries & Co., M.B.H.K.G.: *Thoralbe.*
08189	Everpioneer Line S.A.: *Ever Pioneer.*
08192	Compania Velventos Navegacion S.A.: *Rodosto.*
08193	Orepton Shipping Company, Limited: *Marithi.*
08195	Blanco Cargo Carriers Ltd.: *Hampton Bay.*
08211	Oy Oceanfart AB: *Helios.*
08212	Ravenna Shipping Inc.: *Nego Shang.*
08219	Union Falcon Inc.: *Black Falcon.*
08220	Union Eagle Inc.: *Black Eagle.*
08231	Ecological Shipping Corp.: *Notre Dame Victory.*
08234	Burmah Oil Tankers, Limited: *Burmah Beryl.*
08239	Midiboy Shipping Corporation, Inc.: *Midiboy.*
08240	Penn Shipping Inc.: *Lord de France.*
08246	Oceanus Industries, Inc.: *King Oscar.*
08250	Repulse Bay Co., Inc.: *Repulse Bay.*
08252	Herlofson Schiffahrtsgesellschaft KG.: *Bulk Prospector.*
08263	Selvick Marine Towing Corp.: *Samuel Mitchell.*
08271	Santo Compania Naviera S.A.: *Philippias.*
08276	Manamar Compania Naviera S.A. Panama: *Atenalia.*
08277	Armosy Corporation: *Lattuga.*
08278	MS Greyhound Reederei & Schiffahrts GMBH KG: *Asd Flying Scot.*
08279	Viafiel Armadora S.A.: *Vassilis Katsikis.*
08280	Tasman Voyager, Ltd.: *Tasman Voyager.*
08281	Caribbean Voyager, Ltd.: *Caribbean Voyager.*
08282	Mediterranean Voyager, Ltd.: *Mediterranean Voyager.*
08283	Tropimare Company S.A. Panama: *Sealord I.*
08284	Partenreederei MS "Magdalena Reith": *Magdalena Reith.*
08285	Protostatis Compania Naviera S.A. Panama: *Agelos Raphael.*
08286	Universal Tanker Transports, Inc.: *Oriental Phoentz.*
08287	Chandris Tankers Limited: *Rania Chandris.*
08290	San Constantino Compania Armadora & Financiera Company: *Theano.*
08291	Caledonian Shipping Enterprises, Inc., Panama: *Borea.*
08294	Metropolitan Navigation Corp.: *Monemvasia.*
08299	Caribbean Real Estate S.A.: *Becena.*
08301	Spearin, Preston & Burrows, Inc.: *YD–201 Cariboo, Chinook, No. 5, No. 7, No. 17, No. 42, Jemsen, Almirante, Challenger.*
08305	Duchess Shipping Co.: *M. T. Galva.*
08306	Trans Atlantic Marine Corporation, Ltd.: *Panamax Neptune.*
08312	Greek Australian Line S.A.: *Patris.*
08314	Anatolian Shipping Company, Ltd.: *Marlene.*
08315	Burmast Shipping & Exploration Corporation: *Burmah Amber.*
08316	Martimaris Primero Maritime Corporation: *Eleni Martinos.*

By the Commission.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.73-19494 Filed 9-12-73;8:45 am]

CERTIFICATES OF FINANCIAL RESPONSIBILITY (OIL POLLUTION)

Notice of Certificates Revoked

Notice of voluntary revocation is hereby given with respect to Certificates of Financial Responsibility (Oil Pollution) which had been issued by the Federal Maritime Commission, covering the below-indicated vessels, pursuant to Part 542 of Title 46 CFR and Section 311(p)(1) of the Federal Water Pollution Control Act, as amended.

Certificate No.	Owner/Operator and Vessels
01039	Den Norske Amerikalinje A/S: *Sunndalsfjord.*
01055	Farrell Lines, Incorporated: *African Moon.*
01152	Neptune Maritime Co. of Monrovia: *Evi.*
01170	Fratelli d'Amico-Armatori: *Mare Piceno, Mare Dorico, Mare Felice, Mare Sereno, Mare Adriacum, Mare Tranquillo, Mare Placido.*
01172	H. Clarkson and Company, Limited: *Clarkeden.*
01330	Shell Tankers (U.K.), Ltd.: *Humilaria.*
01421	Bibby Line, Limited: *Warwickshire.*
01422	Booth Steamship Company, Limited: *Veloz, Venimos, Viajero.*
01475	Baron Shipping Co., Ltd.: *Atlantic Baron.*
01477	Freedom Shipping Co., Ltd.: *Atlantic Freedom.*
01861	BP Tanker Company, Ltd.: *British Patrol.*
01904	Waterman Steamship Corporation: *Lafayette.*
01981	AB Svenska Orient Linien: *Tundraland.*
02013	Granges A.B.: *Stolt Vistasvagge.*
02022	C. T. Gogstad & Co.: *Lara Viking, Concordia Lara.*
02198	The Peninsular & Oriental Steam Navigation Company: *Chakrata.*
02288	Cosarma: *Fiaccola.*
02298	Naviera Galea, S.A.: *Galerno, Galea.*
02477	American Dredging Company: *Gates No. 26, Gates No. 25.*
02492	Interstate Oil Transport Co.: *Interstate No. 42.*
02675	Reederei Kai Braundle-Schmidt KG: *Venus.*
02716	Aktieselskabet Det Dansk-Franske Dampskibsselskab: *Belgien.*
02749	Montserrado Transportation Co.: *Olympic Splendour.*
02870	Isthmian Lines, Inc.: *Steel Artisan, Steel Seafarer, Steel Maker.*
02872	States Marine International, Inc.: *Buckeye State.*
02892	Meljoy Transportation Company, Inc.: *MOS 104.*
02956	Ashland Oil Inc.: *NMS 43, NMS 40.*
03351	Compass Shipping Company, Limited: *West Breeze.*
03501	Osaka Shosen Mitsui Senpaku K.K.: *Takaosan Maru.*
03506	Taiheiyo Kaiun K.K.: *Seiwa Maru.*
03531	Yuyo Kaiun K.K.: *Kathryn Maru.*
03728	Ocean Drilling & Exploration Co.: *Ocean Rover.*
03877	Ingram Contractors, Inc.: *Crane Barge 3, Crane Barge 4, Derrick Barge 2, Derrick Barge 3, Derrick Barge 6, Dredge 3, Dredge 5, Dredge 6, Dredge 7, Dredge 8, Dredge 9, Lay Barge No. 4, Lay Barge No. 7, Lay Barge No. 8, Offshore 100, Offshore 105, Offshore, 106.*
03949	Liberian Meridian Transports, Inc.: *World Centenary.*
04017	Alaska Packers Association, Inc.: *Ptarmigan.*
04055	Missouri Barge Line Company, Inc.: *Arthur E. Snider.*
04099	Waterways Marine of Memphis Inc.: *Ellis 1252.*
04275	Intercounty Construction Corp.: *Steel Hull Deck Scow, Steel Hull Deck Scow.*
04358	Holland Bulk Transport N.V.: *Vlieland.*
04386	Maritime Company of the Philippines: *Lingayan Gulf, Sarangani Bay.*
04435	Gateway Barge Line, Inc.: *NDT-101.*
04457	Paulino Escobedo San Juan: *Pedrosa.*
04458	Naviera Artola, S.A.: *Artola.*
04511	Showa Gyogyo Kabushiki Kaisha: *Showa Maru No. 8.*
04571	CIA Naviera Vascongada S.A.: *Vizcaya, Arraiz.*
04572	Compania Iberica de Navegacion y Pesca, S.A.: *Ana Maria Barreras.*
04625	American Commercial Lines, Inc.: *Patrick Calhoun Jr.*
04759	Marguardia Compania Naviera S.A.: *Atys.*
04798	Vicksburg Towing Company, Inc.: *Yazoo City, Redwood.*
04979	Kommanditgesellshaft Taspa Schiffahrtsgesellschaft Mbh & Co.: *Arya Man.*
05301	European Commerce and Navigation Co.: *Tenacidad.*
05754	A. E. Sorensen A/S: *Louis S.*
05779	Glenco, Limited: *Irving Glen.*
05854	Levin Metals Corporation: *Bennion, Grant.*
06232	Aztec Trading Company S.A.: *Aztec.*
06269	Paul & Helen Suchko S & P Towing Inc.: *Walker 23.*
06273	Dowa & Company, Limited: *Silver Shelton, Silver Pagoda, Silver Constellation.*
06475	Carrier Shipping Company S.A.: *Navigator.*
06485	Minibulk Shipping (K. M. Kaalstad): *Mini Star.*
06522	Alioth Navigation Corporation: *Navishipper.*
06578	Van Nievelt, Goudriaan & Co. N.V.: *Argestis, Apeliotis, Aparctias.*

Certificate No.	Owner/Operator and Vessels
06839	Armement Nicoriadot-Martin: *Djungo.*
06878	Italnavi Societa di Navigazione Per Azioni: *Sant' Ambrogio.*
06969	Waterfront Services Co.: *Hines 6.*
07178	Water Tunnel Contractors: *Moran 104, Moran 106, ST-70.*
07290	Hollywood Terminals, Inc.: *KE-38, C & H 106, KE-37, KE-36.*
07295	Andina Compania Naviera S.A.: *Ithaki Reefer.*
07368	Lake Charles Towing Co., Inc.: *L.C.T. #20, L.C.T. #21, L.C.T. #22, L.C.T. #23, L.C.T. #40.*
07441	International Offshore Operators: *Eastern Provider.*
07502	Viadoro Armadora S.A.: *Spartan.*
07600	Angelina Transportation Corp.: *LSC-40.*
07978	Marine Resources, Inc.: *Mariner.*
08222	Rail & Water Terminal (Quebec), Inc.: *Aigle d'Ocean, Aigle Marin, Guard Mavoline.*

By the Commission.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.73-19493 Filed 9-12-73;8:45 am]

MED-GULF CONFERENCE

Notice of Agreement Filed

Notice is hereby given that the following agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1405 I Street NW., Room 1015; or may inspect the agreement at the Field Offices located at New York, N.Y., New Orleans, Louisiana, and San Francisco, California. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, on or before October 3, 1973. 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. Stanley O. Sher, Billig, Sher & Jones, P.C., Suite 300, 1126 Sixteenth Street NW., Washington, D.C. 20036.

Agreement No. 9522-19 among the member lines of the Med-Gulf Conference establishes limitations on the use of substituted service between loading ports in the Mediterranean Sea.

By order of the Federal Maritime Commission.

Dated September 10, 1973.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.73-19492 Filed 9-12-73;8:45 am]

FEDERAL POWER COMMISSION

[Docket No. E-8315]

CENTRAL LOUISIANA ELECTRIC CO.

Notice of Application

SEPTEMBER 7, 1973.

Take notice that on July 12, 1973, Central Louisiana Electric Company (Applicant) tendered for filing a Supplement to the Agreement for Electric Service with Cajun Electric Power Cooperative dated May 25, 1970, Rate Schedule FPC No. 20. The Supplement (1) establishes new delivery points for DeRidder 69 kV, Merryville Junction, DeQuincy 69 kV and Charenton, (2) changes contract power for Olivier delivery point and delivery voltage for Baldwin delivery point, and (3) transfers two delivery points of Pointe Coupee Electric Membership Corporation and four delivery points of Washington-St. Tammany Electric Cooperative from Rate Schedule FPC No. 20 to Rate Schedule FPC No. 21, thereby superseding service furnished to these delivery points on an interim basis under Rate Schedule FPC No. 20. The Supplement is to take effect August 12, 1973.

Any person wishing to be heard or to make any protest with reference to such Application should, on or before September 28, 1973, file with the Federal Power Commission, Washington, D.C. 20426, petitions or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules. The Application is on file with the Commission and is available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-19513 Filed 9-12-73;8:45 am]

[Docket Nos. E-7801, E-8105, E-8111]

CONNECTICUT LIGHT AND POWER CO.

Amending Prior Orders and Denying in Part a Petition for Reconsideration

SEPTEMBER 6, 1973.

By orders of July 10, 1973, in Docket No. E-8105 and August 2, 1973, in Docket Nos. E-7801, E-8105 and E-8111, the Commission consolidated these dockets and instituted an investigation, under section 206 of the Federal Power Act, of several short term contracts which had been filed with the Commission by the Connecticut Light and Power Company (CL&P), most of which were filed on behalf of Northeast Utilities (NU) (consisting of CL&P, the Hartford Electric Light Company, and Western Massachusetts Electric Company). As to one contract between NU and New Bedford Gas and Edison Light Company (New Bedford), filed in Docket No. E-8105, the Commission denied waiver of its notice requirements (under § 35.11 of the Regulations). Such waiver would have permitted a requested effective date of March 1, 1973, the date specified in the contract for the commencement of the sale of capacity and energy from a particular group of gas turbine generating units.

On August 13, 1973, NU filed with the Commission a petition for reconsideration of the above-mentioned orders and appropriate relief. The petition requests, among other things, that the Commission reconsider its denial of waiver of the notice requirements with respects to the contract originally filed in Docket No. E-8105 mentioned above. NU states that the subject contract was negotiated at the request of the New England Gas and Electric Association (of which New Bedford is a member) to obtain capacity which would allow New Bedford to avoid the payment of deficiency charges for the current power year under the New England Power Pool Agreement. The request, according to NU, was not finalized until March 9, 1973, and this made it impossible to satisfy the Commission's normal time requirements with respect to filing. NU states that the effect of the Commission's order denying a retroactive effective date, without further action by NU, will be to confer a windfall on New Bedford by granting it four months of free service under the new contract, since such service began under the new contract on March 1, 1973, in reliance upon previous treatment by the Commission of similar contracts. Upon consideration of NU's petition, particularly in light of the Commission's past treatment of similar contracts, we believe that good cause exists to modify our order of July 10, 1973, to permit the requested waiver.

In its petition, NU further requests that the investigations ordered by the Commission be terminated. In support of this request, the Company states that, while the orders in these proceedings indicate that a question has been raised as to the rate of return specified in various filings, the specified rates of return are determined in accordance with a formula which has been used in a total of 19 separate prior filings which the Commission has permitted to become effective within the past two years without the initiation of any investigations. According to NU, this formula was developed, after the first of these filings, by representatives of NU in conferences with the Commission staff. It is this

Commission's responsibility to maintain a continuing regulatory surveillance pursuant to the directives of the Federal Power Act. We therefore see no basis to bind either the Commission or its staff to the dictates of past practice by terminating this proceeding.

In the event the Commission does not terminate the investigations, NU requests that the Commission supplement and modify its orders so as to: make clear that the issue to be considered is the allowability of the equity rate of return specified in the contracts; specify a date for the filing of testimony and exhibits by NU; and remove the date specified for the filing of testimony and exhibits by intervenors, since there are no intervenors in the proceeding. We see no reason to restrict the Section 206 investigation by unnecessarily narrowing the issues at this stage. The specific issues may be sufficiently defined at the prehearing conference ordered in this proceeding or at settlement conferences. The scope of the Commission staff's testimony and exhibits should be evident upon service thereof. As to the request to specify a date for the filing of testimony and exhibits by NU, that date is clearly set out in ordering paragraph (B) of our July 10, 1973, order in Docket No. E-8105. Finally, we see no compelling need to eliminate the date prescribed for the service of intervenor evidence. While there are, to date, no petitions for intervention in this docket, we would not want to preclude, at this time, late petitions to intervene. The retention of this date will have no appreciable effect upon the proceeding and there is nothing to preclude NU from filing its rebuttal testimony at an earlier date.

Finally, our order of August 2, 1973, in this proceeding omitted mention of the Agreements contained in Docket No. E-7801 between NU and Montaup Electric Company (MEC) filed November 1, 1972; City of Holyoke Gas and Electric Department (Holyoke) filed November 1, 1973; and New Bedford filed October 30, 1972; (collectively; Purchasers). These Agreements should have been identified and are identical to the Agreement between NU and Public Service Company of New Hampshire (PSNH). Accordingly, these contracts shall also be subject to the proceeding ordered in this docket. The Commission finds:

(1) The order of July 10, 1973, issued in Docket No. E-8105 should be amended to permit the requested waiver of the Commission notice requirements so as to allow the rate schedule proposed in that docket to be effective as of March 1, 1973.

(2) The requests contained in NU's petition should be denied as hereinafter ordered.

The Commission orders

(A) NU's request that the order issued July 10, 1973, in Docket No. E-8105 be amended to permit the requested waiver of the Commission's notice requirements is granted and the July 10 order is hereby amended and the rate schedule proposed in that docket shall be effective as of March 1, 1973.

(B) All other requests contained in NU's petition are denied.

(C) The order of August 2, 1973, in Docket Nos. E-7801, E-8105, and E-8111 is hereby amended to include the NU contracts with MEC, Holyoke, and New Bedford in the proceeding ordered in these dockets.

(D) The Secretary of the Commission shall cause prompt publication of this order in the FEDERAL REGISTER.

By the Commission.

[SEAL] KENNETH F. PLUMB, *Secretary.*

[FR Doc.73-19514 Filed 9-12-73;8:45 am]

[Docket No. E-7769]

DELMARVA POWER AND LIGHT CO.

Notice of Postponement of Prehearing Conference and Hearing

SEPTEMBER 6, 1973.

On September 6, 1973, Commission Staff Counsel filed a motion requesting that the prehearing conference and the hearing in the above-designated matter be postponed. The motion states that the postponement is necessitated due to conflicts in the schedules of the Presiding Administrative Law Judge and other parties to the proceeding.

Upon consideration, notice is hereby given that the dates previously set for the prehearing conference and the hearing are extended as follows:

Prehearing Conference, September 25, 1973 (10:00 a.m., EDT)
Hearing, October 9, 1973 (10:00 a.m., EDT)

KENNETH F. PLUMB, *Secretary.*

[FR Doc.73-19515 Filed 9-12-73;8:45 am]

[Project No. 2232]

DUKE POWER CO., INC.

Application for Approval of Non-Project Use of Project Lands and Waters

SEPTEMBER 6, 1973.

Public notice is hereby given that application for approval of nonproject use of project lands and waters was filed August 10, 1973, under the Federal Power Act (16 U.S.C. 791a-825r) by Duke Power Company, Inc. (Correspondence to: Mr. George W. Ferguson, Jr., Associate General Counsel, Duke Power Company, Legal Department, P.O. Box 2178, Charlotte, North Carolina 28201) for Project No. 2232, located on the Catawba River, in Alexander, Burke, Caldwell, Catawba, Gaston, Iredell, Lincoln, McDowell, and Mecklonburg Counties, North Carolina and the Catawba and Wateree Rivers, in Chester, Fairfield, Kershaw, Lancaster, and York Counties, South Carolina. The project lands and waters affected are located in York County, South Carolina on the Big Allison Creek, a tributary of the Catawba River.

The application seeks Commission approval of a proposed easement to the South Carolina Highway Department for a 475 foot by 50 foot strip of project land to be used for the construction of a bridge occasioned by the relocation of County Road 1132. The bridge would cross a cove of Big Allison Creek and provide a fishery deck for public use. Vertical clearance under the bridge would be 15 feet. Present County Road 1132 runs through the plant site for the proposed Catawba Nuclear Station (application filed with the Atomic Energy Commission on October 27, 1972).

Any person desiring to be heard or to make protest with reference to said application should on or before October 23, 1973, file with the Federal Power Commission, Washington, D.C., 20426, petitions to intervene or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 C.F.R. 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 a proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules. The application is on file with the Commission and available for public inspection.

KENNETH F. PLUMB, *Secretary.*

[FR Doc.73-19516 Filed 9-12-73;8:45 am]

[Docket No. CI74-140]

EASON OIL CO.

Notice of Application for Disclaimer of Jurisdiction Over Liquid Products Sale and Facilities

SEPTEMBER 6, 1973.

Take notice that on August 22, 1973, Eason Oil Company (Applicant) P.O. Box 18755, Oklahoma City, Oklahoma 73118, filed in Docket No. CI74-140 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 Southern Natural Gas Company (Southern) from the Big Escambia Creek Field, Escambia County, Alabama, and for an order declaring that the transportation and sale of condensate and light liquids from the said field to Southern, together with the transportation facilities necessary therefor are not subject to the Commission's jurisdiction, all as more fully set forth in the application and petition which is on file with the Commission and open to public inspection.

Applicant proposes under the optional gas pricing procedure to sell natural gas to Southern from its fifty percent working interest in acreage in the Big Escambia Creek Field, which it acquired from Southwest Gas Producing Company, Inc., at an initial rate of 55.0 cents per million Btu at 14.65 p.s.i.a. under the provisions of a contract dated December 1, 1972. Said contract provides for 1-cent

per million Btu price escalations each successive two years, for reimbursement to the seller for 7/8 of any new or increased taxes and for a contract term of 20 years. Applicant also requests pregranted abandonment authorization. Applicant estimates proven reserves attributable to its interest in this acreage are 377,500 M c.f. and that at the outset it will sell approximately 69 M c.f. of gas per day to Southern.

Applicant asserts that this gas will help Southern meet its requirements for gas on its system during the contract term, particularly in light of the fact that Southern is now faced with an increasing shortage of natural gas supplies. Applicant asserts that the instant contract was the result of arm's length bargaining and that the contract with adjustments is competitive with offers of potential purchasers in the intrastate market. Applicant contends that the contract price with adjustments, moreover, is substantially lower than prices for base load purchases and sales of LNG and SNG for which applications have been approved by or are now pending before the Commission.

Applicant requests that the Commission issue an order declaring that the sale of liquid products and facilities necessary therefor in the Big Escambia Creek Field are not within the Commission's jurisdiction. By an Option Agreement dated December 1, 1972, Applicant has granted Southern an option to purchase both the condensate and light liquid products from the subject gas stream. Applicant submits that the Commission should disclaim jurisdiction over these arrangements for the reasons set forth in the application and petition of Mallard Exploration, Inc. (Operator), et al., in Docket No. CI73-698.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 28, 1973, 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.73-19517 Filed 9-12-73;8:45 am]

[Docket No. CI73-644]

EASON OIL CO., ET AL.

Order Granting Motion

SEPTEMBER 6, 1973.

On July 19, 1973, Eason Oil Company (Eason), on its own behalf and on behalf of Devon Corporation (Devon), filed a motion requesting that it be substituted for Southwest Gas Producing Company, Inc. (Southwest) as the applicant in the above-captioned docket.

By conveyance dated as of June 21, 1973, and effective as of June 28, 1973, following recordation, Southwest assigned and coveyed to Eason and John W. Nichols, et ux.,[1] in equal shares, all of Southwest's interest in the producing properties in the Hospital Bazou Field, Lafourche Parish, Louisiana, which are the subject of this proceeding.

Eason is a corporation organized and existing under the laws of the State of Delaware having its principal place of business at 5225 North Shartel, Oklahoma City, Oklahoma 73118. Eason is the holder of a Small Producer Certificate of Public Convenience and Necessity issued April 11, 1972, in Docket No. CS71-631.

The Commission finds

Good cause exists to substitute for the applicant Eason Oil Company, et al., as successor to Southwest Gas Producing Company, Inc.

The Commission orders

Eason Oil Company, et al. is substituted as the applicant in the above-captioned docket.

By the Commission.

[SEAL] KENNETH F. PLUMB,
Secretary.

[FR Doc.73-19528 Filed 9-12-73;8:45 am]

[1] The interest of John W. Nichols and his wife in the Southwest properties was subsequently assigned to Devon by separate conveyance.

[Docket No. E-7002]

INTERIOR DEPARTMENT, ET AL.

Request for Approval of Rates and Charges

SEPTEMBER 5, 1973.

Notice is hereby given that the Secretary of Interior (Secretary), acting on behalf of Southeastern Power Administration (SEPA) and pursuant to section 5 of the Flood Control Act of 1944 (58 Stat. 887, 890), filed a request with the Federal Power Commission on July 31, 1973 in Docket No. E-7002 for confirmation and approval of Wholesale Firm Power Rate Schedules KP-1-A and JHK-1-A and Wholesale Power Rate Schedule KP-2-A applicable to the sale of electric power and energy generated at the John H. Kerr and Philpott Projects (Projects) located on the Roanoke River and Smith River, respectively, in the State of Virginia. The proposed rate schedules are designed to supersede SEPA's current rate schedules for the sale of such power and energy which the Commission approved by order issued on January 15, 1971 in Docket No. E-7002 (45 FPC 162) for the period ending not later than June 30, 1975. The Secretary seeks approval of the proposed rates schedules for the period beginning with the date of issuance of the Commission's order granting such approval and ending June 30, 1975.

Proposed Wholesale Firm Power Rate Schedule KP-1-A is available to public bodies and cooperatives which operate within a 150 mile radius of the Kerr Project and which are served through the facilities of Virginia Electric and Power Company (VEPCO). It supersedes Wholesale Firm Power Rate Schedule KP-1 (Revised). Each of those rate schedules contains the same monthly unit rate, including a demand charge of $1.10 per Kw. of contract demand and an energy charge of 4.50 mills per Kwh. Rate Schedule KP-1-A is applicable to the sale of deficiency energy purchased by SEPA from VEPCO in addition to the sale of on-peak energy generated at the Projects.

Proposed Wholesale Firm Power Rate Schedule JHK-1-A is available to public bodies and cooperatives which operate within a 165 mile radius of the point of interconnection between the electric systems of VEPCO and Carolina Power & Light Company (CP&L) at the Virginia-North Carolina State line in the vicinity of the Kerr Project and which are served through the facilities of CP&L. It supersedes Wholesale Firm Power Rate Schedule JHK-1 (Revised). Each of those rate schedules contains the same monthly unit rate, including a demand charge of $1.10 per Kw. of contract demand and and energy charge of 4.50 mills per Kwh.

Proposed Wholesale Power Rate Schedule KP-2-A is available to CP&L and VEPCO. It supersedes Wholesale Dump Energy Rate Schedule KP-2 (Revised) and Wholesale Firm Power Rate Schedules KP-3 and JHK-2. It reflects marketing arrangements contractually made in 1973 by SEPA with CP&L and VEPCO, respectively, which provide for the sale of additional dependable capacity and eliminate the sale of non-dependable capacity. All on-peak energy generated at the Projects is made available for transmission to public bodies and cooperatives through energy bank arrangements among SEPA, CP&L and VEPCO. The rates for power and energy to CP&L and VEPCO are the same under the proposed rate schedule as under the current rate schedules, including $1.10 per Kw. per

month for dependable capacity and an amount for dump energy equal to 80% of the calculated saving to CP&L and VEPCO in the cost of fuel.

In support of the proposed rate schedules, the Secretary submitted to the Commission the Repayment Study, dated July 1973, prepared by SEPA for the purpose of showing that such rate schedules will produce revenues which, together with the revenues collected to date, will repay all costs associated with the production and transmission of electric power and energy generated at the Projects, including the amortization of the Projects' capital investment allocated to power, within 50 years from the commencement of full commercial operation of the Projects.

Proposed Wholesale Firm Power Rate Schedules KP-1-A and JHK-1-A and Wholesale Power Rate Schedule KP-2-A, together with the Repayment Study in support thereof, are on file with the Commission and available for public inspection. Any person desiring to make comments or suggestions for the Commission's consideration with respect to said rate schedules should submit the same in writing on or before September 28, 1973 to the Federal Power Commission, Washington, D.C. 20426.

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-19525 Filed 9-12-73;8:45 am]

[Docket No. CI73-755]

MIDWEST OIL CORP.

Amendment to Application

SEPTEMBER 7, 1973.

Take notice that on August 22, 1973, Midwest Oil Corporation (Applicant), 1700 Broadway, Denver, Colorado 80202, filed in Docket No. CI73-755 an amendment to its application filed in the subject docket on May 7, 1973, pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity by authorizing under § 2.75 of the Commission's general policy and interpretations (18 CFR 2.75) the sale for resale of natural gas in interstate commerce to Sea Robin Pipeline Company (Sea Robin) from Block 225, Ship Shoal Area, offshore Louisiana, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

Applicant proposes to sell natural gas to Sea Robin at an initial price of 35.0 cents per M.c.f. at 15.025 p.s.i.a., subject to upward and downward Btu adjustment, pursuant to a gas purchase agreement dated July 17, 1972. The agreement provides for 2.50-cent per M c.f. price escalation every three years, for reimbursement to Applicant for any new or increased taxes, for Applicant to pay 0.02 cent per mile of transportation of plant shrinkage volumes and 20.0 cents per barrel for transportation of liquids, and for a contract term of 20 years. Applicant requests pre-granted abandonment authorization. Applicant states that it is amending the application in the instant docket to request authority only with regard to deliveries from those wells in Block 225 which were commenced on or after April 6, 1972, with deliveries from the pre-April 6 wells to be made pursuant to the authorization issued by the Commission in its order of in Docket No. CI72-181.

Applicant believes that approval of its proposal will assist Sea Robin in assuring that its customers will have adequate supplies of gas to meet the demands of consumers during the term of the certificate at a time when Sea Robin's customers, United Gas Pipe Line Company and Southern Natural Gas Company, are curtailing deliveries of gas to their purchasers. Applicant asserts that the instant long-term contract for the sale of natural gas produced domestically and delivered at the contract prices is extremely beneficial to consumers faced with the prospect of paying in excess of $1.00 (initial price) for gas imported from countries with uncertain political futures or transported over long distances from Alaska. Applicant contends that recently executed contracts for the sale of gas in the same area call for much higher prices, in the neighborhood of 45.0 to 50.0 cents per M c.f., and that recently executed contracts in the intrastate markets contain even higher rates. Applicant alleges that the Commission's staff report attached to the notice of proposed rule making in Docket No. R-389-B supports the instant contract prices as said report found that the cost of finding and producing non-associated gas is between 34.68 and 38.26 cents per M c.f. nationwide.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before October 1, 1973, file with the Federal Power Commission, Washington, D.C. 20426 a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-19518 Filed 9-12-73;8:45 am]

[Docket No. CP74-51]

NORTHERN NATURAL GAS CO.

Notice of Application

SEPTEMBER 7, 1973.

Take notice that on August 27, 1973, Northern Natural Gas Company, 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP74-51 an application pursuant to sections 7 (b) and (c) of the Natural Gas Act for permission for and approval of the abandonment of its Sioux Falls Line by sale to the Nebraska Game and Parks Commission and for a certificate of public convenience and necessity authorizing the construction and operation of facilities to relocate a sales regulating station serving the Ponca State Park, all located in Dixon County, Nebraska; all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that in November 1949, pursuant to § 2.55(b) of the Commission's general policy and interpretations, it replaced an old Missouri River aerial crossing with undercrossing facilities, thereby separating the 1.43-mile segment of 14-inch pipe from upstream transmission facilities. According to Applicant, at this point cutting and capping procedures were used and 1-inch by-pass facilities were installed so as to maintain service to Ponca State Park. Applicant states that in view of the fact that the Game and Parks Commission desires ownership of the line which is presently serving only Ponca State Park and since Applicant has no other need for the line, Applicant proposes to abandon the line by sale to the Game and Parks Commission. Applicant proposes to relocate the sales measuring station serving the park at an up-stream location in the vicinity of the undercrossing take-off.

Applicant estimates the cost of the relocation of facilities to be $700.00, to be financed with cash on hand.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 1, 1973, 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 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.73-19521 Filed 9-12-73;8:45 am]

[Docket Nos. CP73-215, CP73-221]

NORTHERN NATURAL GAS CO. AND EL PASO NATURAL GAS CO.

Notice Postponing Procedural Dates

SEPTEMBER 6, 1973.

On September 4, 1973, Northern Natural Gas Company filed a request for an extension of time within which to file testimony and exhibits, in accordance with the order issued August 31, 1973, in the above-designated matter, and for a postponement of the hearing from September 18, 1973, to October 11, 1973. A statement filed by Commission Staff Counsel on September 5, 1973, advised that the parties have agreed to September 20, 1973, for the filing of evidence, and October 3, 1973, for the hearing.

Upon consideration, notice is hereby given that the procedural dates are modified as follows:

Filing of testimony and exhibits by Northern Natural Gas Company and El Paso Natural Gas Company.....September 20, 1973.
Commencement of hearing.....October 3, 1973 (10:00 a.m., EDT).

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-19520 Filed 9-12-73;8:45 am]

[Docket No. CI74-154]

O. B. MOBLEY

Notice of Application

SEPTEMBER 5, 1973.

Take notice that on August 30, 1973, O. B. Mobley (Applicant), 1011 Commercial National Bank Building, Shreveport, Louisiana 71101, filed in Docket No. CI74-154 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 United Gas Pipe Line Company from the Elm Grove Field, Bossier Parish, Louisiana, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that he commenced the sale of natural gas on August 24, 1973, within the contemplation and § 157.29 of the Regulations under the Natural Gas Act (18 CFR 157.29) and proposes to continue said sale for one year from the end of the 60-day emergency period within the contemplation of § 2.70 of the Commission's general policy and interpretations (18 CFR 2.70). Applicant proposes to sell approximately 45,000 M c.f. of gas per month at 50.0 cents per M c.f. at 15.025 p.s.i.a. plus 3.3 cents per M c.f. tax reimbursement and subject to upward and downward Btu adjustment with upward adjustment limited to 1,150 Btu per cubic foot.

It appears reasonable and consistent with the public interest in this case to provide a period shorter than 15 days for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said application should on or before September 17, 1973, 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 any 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.73-19519 Filed 9-12-73;8:45 am]

[Project No. 1881]

PENNSYLVANIA POWER & LIGHT CO.

Notice of Application for Change in Land Rights

SEPTEMBER 6, 1973.

Public notice is hereby given that application was filed on June 11, 1973, under the Federal Power Act (16 U.S.C. 791a-825r) by the Pennsylvania Power & Light Company (correspondence to: Mr. Edward M. Nagel, Vice President, General Counsel and Secretary, Pennsylvania Power & Light Co., 901 Hamilton Street, Allentown, Pennsylvania 18101), Licensee for Hollywood Project No. 1881 for permission to grant an easement for the installation of a submarine cable across the bottom of project reservoir and for the construction of an underground junction manhole. The Holtwood Project is located on the Susquehanna River in Lancaster and York Counties, Pennsylvania.

The application seeks Commission approval of a proposed easement to be granted by Pennsylvania Power & Light Company, Licensee, to American Telephone & Telegraph Company of Pennsylvania. The proposed cable (C1), approximately 1,600 feet in length, would occupy a 30-foot right-of-way parallel and adjacent to existing cable (A1 and B1) routes.

Any person desiring to be heard or to make protest with reference to said application should on or before October 18, 1973, file with the Federal Power Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to a proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein, may 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.73-19527 Filed 9-12-73;8:45 am]

[Docket No. E-8358]

SOUTHERN SERVICES, INC.

Amendment to Interconnection Agreement and of Additional Delivery Point

SEPTEMBER 5, 1973.

Take notice that on August 13, 1973, Southern Services, Inc., on behalf of itself and Alabama Power Company, Georgia Power Company, Gulf Power Company, and Mississippi Power Company (Applicants) filed with the Federal Power Commission, pursuant to § 35.12 of the Regulations under the Federal Power Act, the following:

(1) An Amendatory Agreement between Applicants and the Tennessee Valley Authority (TVA) referring to the Interchange Agreement, dated July 1, 1965, and designated respectively in Southern Service's FPC Rate Schedule No. 33; Alabama Power Company's FPC Rate Schedule No. 88; Georgia Power Company's FPC Rate Schedule No. 687; Gulf Power Company's FPC Rate Schedule No. 38; and Mississippi Power Company's FPC Rate Schedule No. 86.

(2) An Interconnection Agreement, dated October 1, 1973, between Alabama Power Company and TVA establishing the West Jefferson 500 kV and West Point 500 kV Interconnection Points and delineating the responsibilities of TVA and Alabama Power Company for installation, operation and maintenance of

their respective facilities, for reimbursement for advanced expenditure by TVA, and for securing necessary approvals.

(3) Certificates of Concurrence executed on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, and Mississippi Power Company by Southern Services Inc.

The parties to the Interchange Agreement of July 1, 1965, provided for additional interconnections between TVA and Applicants. Pursuant to this proviso, the parties have agreed to establish such interconnections between TVA's Willow Creek 500 kV switchyard and Alabama Power Company's West Point 500 KV switchyard near West Point, Mississippi and its 500 KV switchyard at the proposed West Jefferson steam plant near Birmingham, Alabama. The desired effective dates for these interconnections would be June 1, 1976 for the West Point site and June 1, 1979 for the West Jefferson steam plant site.

The application further states that the Amendatory Agreement extends the term of the original interchange agreement from 1975 to 1983. Also the Amendatory Agreement gives notice that a rental charge embodied in the Letter Agreement dated June 30, 1972 between TVA and Applicants will be discontinued on the date the West Jefferson Steam Plant interconnection point is ready for operation. Further more, the Amendatory agreement provides for a review of the capacity of the Applicants to be made prior to May 15, 1976, and again prior to May 15, 1977, to determine if up to 300 MW. of capacity can be made available to TVA for 17 week periods commencing on November 19, 1978, and November 18, 1979, respectively. If such capacity is available, it shall be provided according to the then existing schedules to the Interchange Agreement.

The application states that the establishment of the above described interconnections will not affect any of the rates between the parties, other than reimbursement for advanced expenditures by TVA.

Applicant Southern Services, Inc. has executed this Amendatory Agreement and the Certificates of Concurrence on behalf of the other Applicants mentioned herein, by virtue of the authority granted to it by letter addressed to the Commission on November 19, 1963, and signed by all parties to the Agreement (with the exception of TVA).

Any person desiring to be heard or to make any protest with reference to said application should on or before September 25, 1973, file with the Federal Power Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules. The application is on file with the Commission and is available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-19522 Filed 9-12-73;8:45 am]

[Docket No. CP74-56]

TEXAS EASTERN TRANSMISSION CORP. AND FLORIDA GAS TRANSMISSION CO.

Notice of Application

SEPTEMBER 6, 1973.

Take notice that on August 30, 1973, Texas Eastern Transmission Corporation (Texas Eastern), P.O. Box 2521, Houston, Texas 77001, and Florida Gas Transmission Company (Florida), P.O. Box 44, Winter Park, Florida 32789, filed in Docket No. CP74-56 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the retention in place, construction, and operation of facilities, and the transportation of natural gas for exchange, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicants state that Florida's river crossing on the Atchafalaya River, St. Landry and Pointe Coupee Parishes, Louisiana, was temporarily put out of service and that Texas Eastern rendered emergency service on a best efforts basis, within the contemplation of § 157.22 of the Regulations under the Natural Gas Act, by permitting Florida to route its gas through Texas Eastern's adjacent river crossing. Texas Eastern installed two 12-inch taps and related equipment at a cost of $38,000 and Florida installed 746 feet of 12¾-inch O.D. pipe and 955 feet of 24-inch O.D. pipe at a cost of $112,000.

Applicants request authorization to leave the previously constructed facilities in service, for Florida to construct additional facilities for a total facility cost of $190,000, and to exchange natural gas. Applicants state that they have entered into an exchange agreement which supersedes and cancels an exchange agreement on file with the Commission as Texas Eastern's Rate Schedule X-53, FPC Gas Tariff, Original Volume No. 2, to add the Atchafalaya River interconnection as an additional point of exchange service under Rate Schedule X-53. The agreement provides that while neither Applicant is in a position to make regular deliveries of gas to the other at such points, each recognizes that under certain circumstances, it may be able to make substantial quantities of gas available to the other at such points as the demands on the system of the other may fluctuate and as the respective dispatchers may mutually agree. The agreement provides for redeliveries within 60 days unless Applicants otherwise mutually agree.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 1, 1973, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-19523 Filed 9-12-73;8:45 am]

[Docket No. E-7929]

TOLEDO EDISON CO.

Further Extension of Time and Postponement of Prehearing Conference and Hearing

SEPTEMBER 6, 1973.

On August 23, 1973, the Cities of Bowling Green and Bryan, Ohio, filed a motion to, *inter alia*, suspend the above-designated proceedings pending action on the application for a *subpoena duces tecum*. On August 31, 1973, Commission Staff Counsel filed a motion to extend the procedural dates. The motion states that all parties have agreed to the dates set forth in the motion.

Upon consideration, notice is hereby given that the procedural dates set by the notice issued August 21, 1973, are further modified as follows:

Intervener Service	September 21, 1973.
Company Rebuttal	October 2, 1973.
Prehearing Conference.	October 10, 1973 (10:00 a.m., e.d.t).
Hearing	October 30, 1973 (10:00 a.m., e.d.t).

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-19524 Filed 9-12-73;8:45 am]

OFFICE OF MANAGEMENT AND BUDGET

BUSINESS ADVISORY COUNCIL ON FEDERAL REPORTS

Change of Date and Location of Public Meeting

Pursuant to Public Law 92-463, notice is hereby given of a change of date and location of a meeting of an ad hoc panel of the Business Advisory Council on Federal Reports originally scheduled for Wednesday, September 19, 1973. The meeting will be held on Wednesday, October 17, 1973, at 9:30 a.m. in the Department of Commerce Auditorium, first floor, Main Commerce Building, 14th and E Streets NW., Washington, D.C. (enter from 14th Street). Notice of the meeting was originally printed in the FEDERAL REGISTER on August 16, 1973.

The purpose of this meeting is to obtain advice on reporting problems involved in a proposed public use report of the Federal Trade Commission entitled "Annual Line of Business Report." The meeting will be open to public observation and participation.

Further information regarding the meeting may be obtained from the Statistical Policy Division, Office of Management and Budget, Room 10208, New Executive Office Building, Washington, D.C. 20503, Telephone 202-395-4730.

VELMA N. BALDWIN,
Assistant to the Director for Administration.

[FR Doc.73-19678 Filed 9-12-73;12:11 pm]

SECURITIES AND EXCHANGE COMMISSION

[File No. 500-1]

ROYAL PROPERTIES INCORPORATED

Order Suspending Trading

SEPTEMBER 7, 1973.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock, $5 par value and all other securities of Royal Properties Incorporated, being traded otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

It is ordered, Pursuant to section 15(c)(5) of the Securities Exchange Act of 1934, that trading in such securities otherwise than on a national securities exchange be summarily suspended, this order to be effective for the period from September 10, 1973, through September 19, 1973.

By the Commission.

[SEAL] GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.73-19445 Filed 9-12-73;8:45 am]

[File No. 500-1]

STRATTON GROUP, LTD.

Order Suspending Trading

SEPTEMBER 7, 1973.

The common stock, $.25 par value, of Stratton Group, Ltd., being traded on the American Stock Exchange pursuant to provisions of the Securities Exchange Act of 1934 and all other securities of Stratton Group, Ltd., being traded otherwise than on a national securities exchange; and

It appearing to the Securities and Exchange Commission that the summary suspension of trading in such securities on such exchanges and otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

It is ordered, Pursuant to section 19(a)(4) and 15(c)(5) of the Securities Exchange Act of 1934, that trading in such securities on the above mentioned exchange and otherwise than on a national securities exchange be summarily suspended, this order to be effective for the period from 10 a.m., e.d.t., on September 7, 1973, and continuing through September 16, 1973.

By the Commission.

[SEAL] GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.73-19444 Filed 9-12-73;8:45 am]

[Rel. No. 7979, 812-3491]

WADE FUND, INC.

Notice of Application Pursuant to Section 6(c) of the Act for Exemption From Section 15(a) of the Act

SEPTEMBER 7, 1973.

Notice is hereby given that Wade Fund, Inc., Suite 2224 Clark Tower, 5100 Poplar Avenue, Memphis, Tennessee 38137 (Fund), an open-end, nondiversified investment company registered under the Investment Company Act of 1940 (Act), has filed an application pursuant to section 6(c) of the Act for an order temporarily exempting Maury Wade Jr. (Adviser), an investment adviser registered pursuant to section 203 of the Investment Advisers Act of 1940, from the provisions of section 15(a) of the Act which prohibit any person from serving as an investment adviser to a registered investment company except pursuant to a written contract which has been approved by the vote of a majority of the outstanding voting securities of such registered company. Fund requests that the exemption be effective from July 26, 1973, until a special meeting of Fund's shareholders is held for the purpose of submitting to such shareholders a new investment advisory agreement, but in no case longer than 90 days after July 26, 1973. All interested persons are referred to the application on file with the Commission for a statement of Fund's representations which are summarized below.

Maury Wade, who engaged in business as a sole proprietor under the name of Maury Wade & Company, served Fund as investment adviser since the latter commenced operations in 1949. Such services were rendered by Maury Wade pursuant to an investment advisory agreement with Fund initially approved by Fund's stockholders on February 23, 1967, and renewed thereafter. On July 18, 1973, Maury Wade died and as a result, such investment advisory agreement terminated, leaving Fund without a investment adviser.

On July 26, 1973, the Fund entered into a written investment advisory agreement with Adviser, the former investment adviser's son. The application states that on such date this investment advisory agreement was authorized by Fund's board of directors and approved by a majority of the board of directors composed of persons who were neither parties to the agreement nor interested persons of any such party. The Fund represents that the terms and condition under which Adviser will serve pursuant to the agreement made July 26, 1973, are the same as those provided in the terminated agreement.

The Fund also represents that a special meeting of Fund's stockholders will be held as soon as practicable for the purpose of affording such stockholders the opportunity to approve or disapprove payment to Adviser of fees under the agreement made on July 26, 1973, for the period for which exemption is requested and for the purpose of submitting to Fund's stockholders a new investment advisory agreement.

Section 15(a) of the Act provides, in part, that it shall be unlawful for any person to serve or act as an investment adviser to a registered investment company except pursuant to a written contract that has been approved by the vote of a majority of the outstanding voting securities of such registered company.

Section 6(c) of the Act provides, in part, that the Commission, by order upon application, may exempt any person, security or transaction from any provisions of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and purposes fairly intended by the policy and provisions of the Act.

The application indicates that the Fund has entered into the agreement with Adviser dated July 26, 1973, and has made the instant request for temporary relief from the provisions of section 15(a) of the Act so that the Fund may have the services of an investment adviser until a meeting of Fund's stockholders can be held to consider a new investment advisory agreement as provided in section 15(a) of the Act. With respect to management's selection of Maury Wade, Jr. to serve Fund as adviser during the interim period, the application states that Maury Wade, Jr. is intimately familiar with the operations of Fund having been employed by Maury Wade for nine years prior to the latter's death and having assisted Maury Wade with investment recommendations to the Fund during the last several years of such period.

Notice is further given that any interested person may, not later than October 4, 1973, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission should order a hearing thereon. Any such communication should be addressed: Secretary, Securities and

Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon Wade Fund, Inc., at the address stated above. Proof of such service (by affidavit, or in case of an attorney at law, by certificate) shall be filed contemporaraneously with the request. At any time after said date, as provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein may be issued by the Commission upon the basis of the information stated in said application unless an order for hearing upon said application shall be issued upon request or upon the Commission's own motion. Persons who request a hearing or advice as to whether a hearing is ordered will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management Regulation, pursuant to delegated authority.

[SEAL] GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.73-19446 Filed 9-12-73;8:45 am]

SMALL BUSINESS ADMINISTRATION

[Application 05/05-5093]

AMERICAN INNER URBAN INVESTMENT CORP.

Application for a License as a Small Business Investment Company

An application for a license to operate as a small business investment company under the provisions of Section 301(d) of the Small Business Investment Act of 1958, as amended (15 U.S.C. 461 et seq.), has been filed by American Inner Urban Investment Corporation (applicant) with the Small Business Administration (SBA) pursuant to 13 CFR 107.102 (1973).

The officers and directors of the applicant are as follows:

Robert George Harness, Chairman, Board of Directors, 6245 Sharon Woods Boulevard, Columbus, Ohio 43229.

Napoleon Arthur Bell, President, Director, 1975 Sunbury Road, Columbus, Ohio 43219.

Charles Francis Dugan II, Secretary, Director, 120 Halligan Avenue, Worthington, Ohio, 43085.

Lewis Russell Smoot, Sr., Treasurer, Director, 185 Buckeye Court, Westerville, Ohio 43081.

John Wragg Kellogg, Director, General Counsel, 2214 East 81st Street, Cleveland, Ohio 44103.

The applicant, an Ohio corporation with its principal place of business located at 1213 East Dublin-Granville Road, Columbus, Ohio 43229, will begin operations with $505,000 of paid-in capital and paid-in surplus, derived from the sale of 5,050 shares of common stock to American United Inns, Inc., a widely held public company in the business of building, owning and operating nursing homes and day care centers, and located at the same address as the applicant.

As a small business investment company under section 301(d) of the Act, the applicant has been organized and chartered solely for the purpose of performing the functions and conducting the activities contemplated under the Small Business Investment Act of 1958, as amended from time to time, and will provide assistance solely to small business concerns which will contribute to a well-balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages.

Matters involved in SBA's consideration of the applicant include the general business reputation and character of the proposed owner and management, and the probability of successful operation of the applicant under their management, including adequate profitability and financial soundness, in accordance with the Small Business Investment Act and SBA Rules and Regulations.

Any person may, not later than September 28, 1973, submit to SBA written comments on the proposed applicant. Any such communication should be addressed to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street NW., Washington, D.C. 20416.

A copy of this notice shall be published in a newspaper of general circulation in Columbus, Ohio.

Dated: September 5, 1973.

JAMES THOMAS PHELAN,
Deputy Associate Administrator for Investment.

[FR Doc.73-19478 Filed 9-12-73;8:45 am]

[Notice of Disaster Loan Area 1004; Amdt. I]

NEW HAMPSHIRE

Amendment to Notice of Disaster Relief Loan Availability

As a result of the President's declaration of the State of New Hampshire as a major disaster area following severe storms and flooding beginning on or about June 26, 1973, and amended for the severe storms and flooding occurring August 2 through 4, 1973, applications for disaster relief loans will be accepted by the Small Business Administration from flood victims in the following additional county: Hillsboro, and adjacent affected areas. (See 38 FR 19878.)

Applications may be filed at the:

Small Business Administration
District Office
55 Pleasant Street
Concord, New Hampshire 03301

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 October 29, 1973.

Dated August 30, 1973.

THOMAS S. KLEPPE,
Administrator.

[FR Doc.73-19477 Filed 9-12-73;8:45 am]

DEPARTMENT OF LABOR

Office of the Secretary

ADVISORY COMMITTEE ON WOMEN TO THE SECRETARY

Establishment of Committee

Notice is hereby given of the establishment of the Advisory Committee on Women to the Secretary of Labor pursuant to a request by the Secretary of Labor with the approval of the Office of Management and Budget as required by section 9(a)(2) of the "Federal Advisory Committee Act."

The purpose of this Committee is to advise the Secretary of Labor on improving the status of working women in connection with the laws and programs administered by the Department of Labor, including those employed by the Department of Labor. The Committee will focus on those matters in which the Department of Labor is involved due to its official responsibilities. The Committee will report to the Chairman of the Committee, the Secretary of Labor.

Signed at Washington, D.C., this 11th day of September 1973.

PETER J. BRENNAN,
Secretary of Labor.

[FR Doc.73-19680 Filed 9-12-73;12:19 pm]

INTERSTATE COMMERCE COMMISSION

[Notice No. 72]

MOTOR CARRIER, BROKER, WATER CARRIER AND FREIGHT FORWARDER APPLICATIONS

SEPTEMBER 7, 1973.

The following applications (except as otherwise specifically noted, each applicant (on applications filed after March 27, 1972) states that there will be no significant effect on the quality of the human environment resulting from approval of its application), are governed by Special Rule 1100.247 [1] of the Commission's general rules of practice (49 CFR, as amended), published in the FEDERAL REGISTER issue of April 20, 1966, effective May 20, 1966. These rules provide, among other things, that a protest to the granting of an application must be filed with the Commission within 30 days after date of notice of filing of the application is published in the FEDERAL REGISTER. Failure seasonably to file a protest will be construed as a waiver of opposition and participation in the proceeding. A protest under these rules should comply with section 247(d)(3) of the rules of practice which requires that it set forth specifically the grounds upon which it is made, contain a detailed statement of protestant's interest in the proceeding (including a copy of the specific portions of its authority which protestant believes to be in conflict with that sought in the application, and describing in detail the method—whether by joinder, interline, or other means—by which protestant would use such authority to provide all or part of the service proposed), and shall specify with particularity the facts, matters, and things relied upon, but shall not include

issues or allegations phrased generally. Protests not in reasonable compliance with the requirements of the rules may be rejected. The original and one (1) copy of the protest shall be filed with the Commission, and a copy shall be served concurrently upon applicant's representative, or applicant if no representative is named. If the protest includes a request for oral hearing, such requests shall meet the requirements of section 247(d)(4) of the special rules, and shall include the certification required therein.

Section 247(f) of the Commission's rules of practice further provides that each applicant shall, if protests to its application have been filed, and on or before November 12, 1973, notify the Commission in writing (1) that it is ready to proceed and prosecute the application, or (2) that it wishes to withdraw the application, failure in which the application will be dismissed by the Commission.

Further processing steps (whether modified procedure, oral hearing, or other procedures) will be determined generally in accordance with the Commission's general policy statement concerning motor carrier licensing procedures, published in the FEDERAL REGISTER issue of May 3, 1966. This assignment will be by Commission order which will be served on each party of record. Broadening amendments will not be accepted after the date of this publication except for good cause shown, and restrictive amendments will not be entertained following publication in the FEDERAL REGISTER of a notice that the proceeding has been assigned for oral hearing.

No. MC 8948 (Sub-No. 104), filed June 18, 1973. Applicant: WESTERN GILLETTE, INC., 2550 East 28th Street, Los Angeles, Calif. 90058. Applicant's representative: Therodore W. Russell, 1545 Wilshire Blvd., Los Angeles, Calif. 90017. Authority sought to operate as a common carrier, by motor vehicle, over regular routes transporting: *General Commodities* (except Classes A and B explosives, livestock, articles of unusual value, household goods as defined by the Commission, commodities in bulk, in tank vehicles, and commodities requiring special equipment), (1) Between Dallas, Tex., and New Orleans, La.: From Dallas, Tex., over Interstate Highway 20 to junction U.S. Highway 71 at Shreveport, La., thence over U.S. Highway 71 to junction U.S. Highway 190 at Krotz Springs, La., thence over U.S. Highway 190 to junction U.S. Highway 61 at Baton Rouge, La., thence over U.S. Highway 61 to New Orleans and return over the same route, serving Shreveport, Baton Rouge, and all points on U.S. Highway 61 between Baton Rouge and New Orleans as intermediate points; and Bossier City as an off-route point, and serving Krotz Springs, La., for purposes of joinder only; (2) between Houston, Tex., and Baton Rouge, La.; from Houston, Texas, over Interstate Highway 10 to junction U.S. Highway 167 at Lafayette, La., thence over U.S. Highway 167 to junction U.S. Highway 190 near Opelousas, La., thence over U.S. Highway 190 to Baton Rouge, La., and return over the same route, serving no intermediate points except as otherwise authorized, but serving the intermediate point of Krotz Springs, La., for purposes of joinder only, restricted to traffic moving to, from or through either El Paso or Dallas, Tex.

NOTE.—If a hearing is deemed necessary applicant requests it be held at either Los Angeles, Calif.; New Orleans, La.; or Dallas, Tex.

No. MC 13087 (Sub-No. 37), filed August 3, 1973. Applicant: STOCKBERGER TRANSFER & STORAGE, INC., 524 Second Street, SW., Mason City, Iowa 50401. Applicant's representative: William L. Fairbank, 900 Hubbell Building, Des Moines, Iowa 50309. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Beer*, (1) from St. Louis, Mo., to points in Mason City, Iowa, and (2) from Minneapolis, Minn., to Britt, Iowa, restricted to traffic originating at the named origins and destined to the named destinations.

NOTE.—Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at St. Paul, Minn.

No. MC 26396 (Sub-No. 83) (AMENDMENT), filed June 25, 1973, published in the FEDERAL REGISTER issue August 16, 1973, and republished as amended, this issue. Applicant: POPELKA TRUCKING CO., doing business as THE WAGGONERS, a Corporation, P.O. Box 990, Livingston, Mont. 59047. Applicant's representative: Jacob P. Billig, 1108 16th Street NW., Washington, D.C. 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Lumber, wood products, lumber products, and forest products*, from Beaver and Yakima, Wash.; Priest River, Troy, Calder, Priest Lake, Mountain Home, Tammarock, Kooskia, and Emmet, Idaho; and points in Lane, Wasco, Jackson, Josephine, Linn, Tillamook, Multnomah, Douglas, Polk, Coos, Benton, Yamhill, and Marion Counties, Oreg., to Kalispell and Columbia Falls, Mont.; Fargo, Corrington, Grand Forks, Minot, Bismarck, and Jamestown, N. Dak.; Rapid City, Sioux Falls, Rosholt, Belle Fourche, Watertown, Aberdeen, and Lemmon, S. Dak.; Albany, Windom, New Ulm, Greenwold, Clarks Grove, and St. Paul, Minn.; Belleville and Milan, Ill.; Humboldt, Iowa City, and Eagle Grove, Iowa; Columbia, Mo.; Madison, Oshkosh, Mercer, Glover, Rhinelander, Siren, and Shawano, Wis.; Ft. Morgan, Aspen, Glenwood Springs, Lamar, Springfield, and Sterling, Colo.; points in Larimer, Boulder, Weld, Denver, El Paso, Pueblo, Routt, Jefferson, Arapahoe, and Mesa Counties, Colo.; Casper, Cheyenne, Laramie, Rock Springs, Rawlins, Riverton, and Jackson, Wyo.; Albuquerque and Sante Fe, N. Mex.; and Wichita, Kans.; (2) *charcoal briquettes, charcoal, fireplace logs, and related items* (i.e., lighter fluid, wood chips, barbeque grille base), from Husky Industries, Inc., plant at or near Dickinson, N. Dak., to points in Colorado, Idaho, Montana, Oregon, Washington, and Wyoming; and (3) *feed ingredients and additives* in bag, bulk, and containerized, from Trenton, Mich.; Lawrence, Kans.; Chicago, Chicago Heights, and Joliet, Ill.; Southgate, Calif.; and Rockwell Railsiding at Maintowoc, Wis., to points in Big Horn and Yellowstone Counties, Mont.

NOTE.—The purpose of this republication is to amend the commodity description of "wood" to read "wood products." Applicant states that the requested authority cannot or will not be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Missoula, Mont.

No. MC 28067 (Sub-No. 19), filed August 6, 1973. Applicant: WILLIAMS MOTOR TRANSFER, INC., South Vine Street, Barre, Vt. 05641. Applicant's representative: John P. Monte, 61 Summer Street, Barre, Vt. 05641. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Abrasive mixtures*, from points in Vermont, to Pittsburgh, Pa., and (2) *masonry equipment, materials, and supplies*, from points in Connecticut, Massachusetts, Maryland, North Carolina, New York, Ohio, Pennsylvania, South Carolina, and Virginia, to points in Maine, New Hampshire, Vermont, and points in Clinton, Franklin, Essex, Warren, Saratoga, and Washington Counties, N.Y.

NOTE.—Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Montpelier, Vt., or Boston, Mass.

No. MC 35628 (Sub-No. 352), filed July 5, 1973. Applicant: INTERSTATE MOTOR FREIGHT SYSTEM, a Corporation, 134 Grandville SW., Grand Rapids, Mich. 49502. Applicant's representative: Leonard D. Verdier, Jr., 900 Old Kent Building, Grand Rapids, Mich. 49502. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk and those requiring special equipment), serving the plantsite of Anaconda Aluminum Company at or near Sebree, Ky., as an off-route point in connection with carrier's regular route operations.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at Louisville, Ky., or Chicago, Ill.

No. MC 87511 (Sub-No. 15), filed July 27, 1973. Applicant: SAIA MOTOR FREIGHT LINE, INC., P.O. Box 10157, Houma, La. 70360. Applicant's representative: Philip Robinson, P.O. Box 2207, Austin, Tex. 78767. Authority sought to

[1] Copies of Special Rule 247 (as amended) can be obtained by writing to the Secretary, Interstate Commerce Commission, Washington, D.C. 20423.

operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and commodities which because of size or weight require the use of special equipment), (1) Between Alexandria, La., and Monroe, La.: From Alexandria over U.S. Highway 165 to Monroe, and return over the same route, serving no intermediate points; (2) Between Shreveport, La., and Monroe, La.: From Shreveport over U.S. Highway 80 and Interstate Highway 20 to Monroe, and return over the same routes, serving all intermediate points; (3) Between Alexandria, La., and Ruston, La.: From Alexandria, La., over U.S. Highway 167 to Ruston, and return over the same route, serving no intermediate points except service as authorized to and from the plantsite and warehouse facilities of Continental Can Corporation located at or near Hodge, La.; (4) Between Shreveport, La., and the plantsite of International Paper Company located at or near Springhill, La.: From Shreveport over Louisiana Highway 3 to junction Louisiana Highway 157, thence over Louisiana Highway 157 to the plantsite of International Paper Company located at or near Springhill, and return over the same route, serving no intermediate points; (5) Between junction Interstate Highway 20 and Louisiana Highway 7 and the plantsite of International Paper Company located at or near Springhill, La.: From junction Interstate Highway 20 and Louisiana Highway 7 over Louisiana Highway 7 to the plantsite of International Paper Company located at or near Springhill, and return over the same route, serving no intermediate points; (6) Between Minden, La., and the plantsite of Ludlow Corporation located at or near Homer, La.: From Minden over U.S. Highway 79 to the plantsite of Ludlow Corporation located at or near Homer, and return over the same route, serving no intermediate points; (7) Between Monroe, La., and the plantsite of International Paper Company at or near Bastrop, La.: From Monroe over U.S. Highway 165 to the plantsite of International Paper Company at or near Barop, La., and return over the same route, serving no intermediate points except that service is authorized to the off-route point of the plantsite of Commercial Solvents Corporation and the plantsite of R. T. Vanderbilt Co., both located at or near Sterlington, La.; (8) Between Lake Charles, La., and Shreveport, La.; From Lake Charles over U.S. Highway 171 to Shreveport, and return over the same route, serving no intermediate points except that service is authorized to and from the intermediate or off-route points located within: (1) the plantsite of Boise Southern Paper Company at or near De Ridder, La.; and (2) the Fort Polk Army Reservation and Depot located at or near Leesville, La.; (9) Between Baton Rouge, La., and St. Francisville, La.: From Baton Rouge over U.S. Highway 61 to its intersection with Louisiana Highway 10, thence over Louisiana Highway 10 to St. Francisville, and return over the same route, serving all intermediate points and the plantsite of Crown Zellerbach Corp. at or near Zee, La., as an off-route point. RESTRICTION: The above operations authorized over the route next-above described between Baton Rouge and St. Francisville are subject to the restriction that carrier shall transport no traffic between points on said route, on the one hand, and, on the other, New Orleans, La.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at Baton Rouge, or New Orleans, La.

No. MC 87566 (Sub-No. 7), filed July 30, 1973. Applicant: SCHMIDT TRUCK SERVICE, INC., U.S. Highway 66, Litchfield, Ill. 62056. Applicant's representative: Robert T. Lawley, 300 Reisch Building, Springfield, Ill. 62701. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Truck, automobile, and trailer parts and accessories, engine parts and accessories, brake parts, systems and fluids, fork lift and industrial truck parts and accessories, lawnmower parts, and accessories*, from the plantsite and warehouse facilities of Automotive Controls Corporation at Litchfield, Ill., to points in Alabama, Arkansas, Connecticut, Georgia, Iowa, Indiana, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Missouri, Mississippi, New York, Oklahoma, Ohio, Pennsylvania, Texas, Tennessee, and Wisconsin.

NOTE:—Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill,, or St. Louis, Mo.

No. MC 87720 (Sub-No. 147), filed July 16, 1973. Applicant: BASS TRANSPORTATION CO., INC., P.O. Box 391, Flemington, N.J. 08822. Applicant's representative: Bert Collins, Suite 6193, 5 World Trade Ctr., New York, N.Y. 10048. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Glass containers, closures, caps, covers, carton parts, and material* used in the manufacture, sale, and distribution of glass containers, between Lawrencesburg, Ind., on the one hand, and, on the other, points in Illinois, Wisconsin, Kentucky, Ohio, Missouri, Michigan, and Indiana, under contract with Dart Industries, Inc.

NOTE.—Applicant also holds common carrier authority in MC 135684 and subs thereunder, therefore, dual operations may be involved. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

No. MC 94350 (Sub-No. 339), filed July 23, 1973. Applicant: TRANSIT HOMES, INC., P.O. Box 1628, Haywood Rd., Greenville, S.C. 29602. Applicant's representative: Mitchell King, Jr. (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Trailers* designed to be drawn by passenger automobiles in initial shipments, from points in Monroe County, Miss., to points in the United States (except Alaska and Hawaii).

NOTE.—Common control may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Columbus, Miss.

No. MC 95084 (Sub-No. 95), filed August 2, 1973. Applicant: HOVE TRUCK LINE, a Corporation, Stanhope, Iowa 50246. Applicant's representative: Kenneth F. Dudley, 611 Church Street, P.O. Box 279, Ottumway, Iowa 52501. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Agricultural implements and machinery, platforms, feeders, trailers, wagon augurs, spreaders, buckets, hoists, accessories, attachments, and parts*, from Cokato, Minn., and Sioux Falls, S. Dak., to points in the United States (except Alaska and Hawaii); and (2) *materials, equipment, and supplies* used in the manufacture, processing, sale, and distribution of the commodities in (1) above, from points in the United States (except Alaska and Hawaii), to Cokato, Minn., and Sioux Falls, S. Dak.

NOTE.—Applicant states that the requested authority can be tacked with its existing authority in (1) above at Fort Dodge, Iowa; Manhattan, Kans., and Kewanee, Ill., to provide a through service from Cokato, Minn., and Sioux Falls, S. Dak., to points in the United States, however no new service would be provided; and in (2) above at points in the United States to serve points in the United States. If a hearing is deemed necessary, applicant requests it be held at Minneapolis, Minn., or Chicago, Ill.

No. MC 105501 (Sub-No. 7), filed July 16, 1973. Applicant: TERMINAL WAREHOUSE COMPANY, a Corporation, 498 First Street NW., New Brighton, Minn. 55112. Applicant's representative: Joseph J. Dudley, W. 1260 First National Bank Bldg., St. Paul, Minn. 55101. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lumber*, from Cloquet, Minn., to St. Louis, Mo., and points in Illinois, Indiana, Iowa, Michigan, Ohio, and Wisconsin.

NOTE.—Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at St. Paul, Minn.

No. MC 105501 (Sub-No. 8), filed July 16, 1973. Applicant: TERMINAL WAREHOUSE COMPANY, a Corporation, 498 First Street NW., New Brighton, Minn. 55112. Applicant's representative: Joseph J. Dudley, W. 1260 First National Bank Bldg., St. Paul, Minn. 55101. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Paper and paper products*, from Brainerd and Cloquet, Minn., to Minneapolis and St. Paul, Minn., restricted to traffic having an immediate subsequent movement by rail to points in Connecticut, Illinois, Indiana, Maryland, Michigan, New Jersey, New York, Ohio, Pennsylvania, and the District of Columbia.

NOTE.—Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at St. Paul, Minn.

No. MC 105566 (Sub-No. 96), filed August 6, 1973. Applicant: SAM TANKSLEY TRUCKING, INC., P.O. Box 1119, Cape Girardeau, Mo. 63701. Applicant's representative: Thomas F. Kilroy, P.O. Box 624, Springfield, Va. 22150. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Plasticizers, plastic materials, and plastic articles*, from Washington and Morgantown, W. Va., Gary, Ind., Ottawa, Ill., Calvert City, Ky., Akron and Xenia, Ohio, Memphis, Tenn., and Tuscola, Ill., to points in Washington, Oregon, Idaho, California, Nevada, Utah, Colorado, Arizona, New Mexico, and Texas.

NOTE.—Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C., or Columbus, Ohio.

No. MC 107107 (Sub-No. 429), filed July 31, 1973. Applicant: ALTERMAN TRANSPORT LINES, INC., 12805 NW. 42d Ave. (LeJeune Rd.), Opa Locka, Fla. 33054. Applicant's representative: Ford W. Sewell (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Candy and confectionery and related products* (except in bulk) and (2) *advertising matter, premium and display materials* when shipped in the same vehicle with commodities described in (1) above in vehicles equipped with mechanical refrigeration, from the plantsite and warehouse facilities of M. & M./Mars, Division of Mars, Inc., located at or near Albany, Atlanta, Decatur and Doraville, Ga., to points in Florida, New Jersey, and New York, restricted to the transportation of traffic originating at the plantsite and warehouse facilities of M. & M./Mars, Division of Mars, Inc.

NOTE.—Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Miami, Fla.

No. MC 107107 (Sub-No. 431), filed July 30, 1973. Applicant: ALTERMAN TRANSPORT LINES, INC., 12805 NW., 43nd Ave. (LeJeune Rd.), Opa Locka, Fla. 33054. Applicant's representative: Ford W. Sewell (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foods and foodstuffs* in vehicles equipped with mechanical refrigeration, from South Edmeston and Walton, N.Y., Elizabeth and Freehold, N.J., and Hagerstown, Md., to points in North Carolina, South Carolina, Georgia, Florida, Alabama, Tennessee, and Texas.

NOTE.—Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Miami, Fla.

No. MC 109540 (Sub-No. 30), filed July 9, 1973. Applicant: YEARY TRANSFER COMPANY, INC., 2171 Christian Road, Lexington, Ky. 40505. Applicant's representative: George M. Catlett, 703–706 McClure Bldg., Frankfort, Ky. 40601. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Tobacco hogsheads and tobacco hogshead parts*, from the plantsite of the Gay-Bell Corporation at Paris, Ky., to points in Florida, Georgia, Maryland, New Jersey, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia, West Virginia, Wisconsin, Missouri, and Kentucky; and (2) *tobacco handling and testing equipment* between points in Florida, Georgia, Maryland, New Jersey, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia, West Virginia, Wisconsin, Missouri, and Kentucky.

NOTE.—Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Lexington or Louisville, Ky.

No. MC 110098 (Sub-No. 135) (CORRECTION), filed April 11, 1973, published in the FEDERAL REGISTER issue May 24, 1973, and republished, in the FEDERAL REGISTER issue June 21, 1973, and in third publication as corrected this issue. Applicant: ZERO REFRIGERATED LINES, a Corporation, 1400 Ackerman Road, P.O. Box 20380, San Antonio, Tex. 78220. Applicant's representative: Donald L. Stern, 530 Univac Building, 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, and meat byproducts, and articles distributed by meat packinghouses* (except hides and commodities in bulk) as described in Sections A and C of Appendix I to the report in "Descriptions in Motor Carrier Certificates" 61 M.C.C. 209 and 766, (1) From Wagner, S. Dak., to points in Kansas, Missouri, Oklahoma, Arkansas, Texas, Louisiana, and New Mexico; and (2) from points in Colorado, Kansas, Missouri, Oklahoma, Arkansas, Texas, Louisiana, and New Mexico, to Wagner, S. Dak., restricted to transportation of traffic originating at the named origins and destined to the named destinations.

NOTE.—The purpose of this republication is to correctly indicate the commodity description reference sections of Appendix I to the report in "Descriptions in Motor Carrier Certificates" 61 M.C.C. 209 and 766 as A and C in lieu of A and B as previously published. Applicant states that the requested authority cannot or will not be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Omaha, Nebr., or San Antonio, Tex.

No. MC 113024 (Sub-No. 127), filed July 24, 1973. Applicant: ARLINGTON J. WILLIAMS, INC., R.D. #2, 1963 South DuPont Highway, Smyrna, Del. 19720. Applicant's representative: Samuel W. Earnshaw, 855 Washington Bldg., Washington, D.C. 20005. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Industrial and garden hose, and materials and supplies used in the manufacture thereof* (except commodities requiring special equipment), (1) between points in Box Butte and Red Willow Counties, Nebr., on the one hand, and, on the other, Wilmington, Del., Cockeysville, Md., and points in Cook and Lake Counties, Ill., Fayette and Huntington Counties, Ind., Jefferson County, Ky., Berrien and Wayne Counties, Mich., Essex County, N.J., Franklin, Licking, and Paulding Counties, Ohio, Anderson, Dallas, and Tarrant Counties, Tex.; and (2) from points in Cook and Lake Counties, Ill., to Wilmington, Del., under contract with Electric Hose & Rubber Company.

NOTE.—Applicant also holds common carrier authority in MC 135046 and Subs thereunder, therefore dual operations may be involved. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

No. MC 113678 (Sub-No. 500), filed May 13, 1973. Applicant: CURTIS, INC., 4810 Pontiac Street, Commerce City (Denver), Colo. 80022. Applicant's representative: Richard A. Peterson, P.O. Box 80806, Lincoln, Nebr. 68501. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs*, from Gallup, N. Mex., to points in Arizona, California, Nevada, Utah, Colorado, Kansas, Missouri, Illinois, Wisconsin, Minnesota, Iowa, Nebraska, Idaho, Oregon, and Washington.

NOTE.—Applicant states that the requested authority can be tacked: (1) at Denver, Colo., with its existing authority held in Sub 12 (presently tacked to Sub 90) which authorizes the transportation of dairy products, chilled and frozen bakery products, frozen fruits, frozen vegetables, frozen pizza, and pizza pie ingredients to provide through service from New York, N.Y., and Philadelphia, Pa., to points in New Mexico; (2) at Los Angeles, San Diego, and San Francisco, Calif., in Sub 38 on meats to provide through service to points in New Mexico, and on fish and agricultural commodities to points in New Mexico; (3) at Bridgeville, Del., and Salisbury, Md., in Sub 49 on canned goods to provide a through service to points in New Mexico; (4) at Denver, Colo., in Sub 274 (presently tacked with Sub 90) on dairy products, chilled and frozen bakery products, frozen fruits, vegetables, berries, french fries, pizza and pizza pie ingredients to provide a through service from points in Idaho, Oregon, and Washington (except Kennewick) to points in New Mexico; (5) at Wahoo, Nebr., in Sub 108 on frozen foods to provide a through service to points in New Mexico; and (6) at Denver, Colo., in Sub 433 on soft drinks and fruit juices, in containers, to provide a through service from Denver, Colo., to points in New Mexico. Applicant states it has no present intention to tack. Persons interested in the tacking possibilities are cautioned that failure to oppose the application may result in an unrestricted grant of authority. If a hearing is deemed necessary, applicant requests it be held at Denver, Colo.; Chicago, Ill.; or Milwaukee, Wis.

No. MC 113678 (Sub-No. 504) (AMENDMENT), filed June 25, 1973,

published in FEDERAL REGISTER issue of August 16, 1973, and republished as amended this issue. Applicant: CURTIS, INC., 4810 Pontiac Street, Commerce City, Colo. 80222. Applicant's representative: Richard A. Peterson, P.O. Box 80806, Lincoln, Nebr. 68501. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foods, food products, food preparations and foodstuffs, and advertising equipment, materials, and supplies when shipped therewith* (except commodities in bulk), from points in Ohio and points in Boone, Campbell, and Kenton Counties, Ky., to points in Kentucky, Illinois, Indiana, Iowa, Nebraska, Colorado, Kansas, Missouri, Michigan, Minnesota, Wisconsin, Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New York, New Jersey, Ohio, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia, and the District of Columbia.

NOTE.—The purposes of this republication are (1) to extend the commodity description to include food preparations and (2) correctly indicate the counties of Boone, Campbell, and Kenton in Kentucky rather than in Nebraska as previously published.

Common control may be involved. Applicant states that the requested authority can be tacked with its existing authority in Subs 90, 92, 99, 111, 133, 149, 157, 190, 257, 262, 284, 330, 331, 350, 376, 387, and 428, however, tacking with these subs is unfeasible because of the circuity involved and also the duplicative nature of some of the authority makes such tacking unnecessary, therefore applicant has no intention to tack these subs with its existing authority. Tacking, however, is possible with applicant's Subs 38 and 162 at points in Colorado, to serve the additional destination states of Arizona, California, Nevada, New Mexico, Washington, Oregon, Idaho, and Montana. Applicant further states that it has no present intention to tack Subs 38 and 162. Persons interested in the tacking possibilities are cautioned that failure to oppose the application may result in an unrestricted grant of authority. If a hearing is deemed necessary, applicant requests it be held at Columbus, Ohio.

No. MC 114045 (Sub-No. 388), filed July 2, 1973. Applicant: TRANS-COLD EXPRESS, INC., P.O. Box 5842, Dallas, Tex. 75222. Applicant's representative: J. B. Stuart (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Candy and confectionery and related products* (except in bulk) and (2) *advertising matter, premium and display materials* when shipped in the same vehicle with commodities described in (1) above, in vehicles equipped with mechanical refrigeration, from the plantsite and warehouse facilities of M&M/MARS, Division of Mars, Incorporated, located at or near Albany, Atlanta, Doraville and Decatur, Ga., to points in Arizona, Arkansas, California, Colorado, Illinois, Indiana, Kansas, Maine, Michigan, Minnesota, Nevada, New Hampshire, New Jersey, New Mexico, New York, Ohio, Oklahoma, Oregon, Texas, Utah, Vermont, Washington, and Wisconsin, restricted to the transportation of traffic originating at the plantsite and warehouse facilities of M&M/MARS, Division of Mars, Incorporated.

NOTE.—Common control may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C., or New York, N.Y.

No. MC 114273 (Sub-No. 145), filed August 6, 1973. Applicant: CEDAR RAPIDS STEEL TRANSPORTATION, INC., P.O. Box 68, Cedar Rapids, Iowa 52406. Applicant's representative: Robert E. Konchar, Suite 315, Commerce Exchange Building, P.O. Box 1943, Cedar Rapids, Iowa 52406. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Iron and steel articles*, from the plantsite and storage facilities of Laclede Steel Company, at Alton and Madison, Ill., to points in Iowa, Kansas, Nebraska, and Colorado.

NOTE.—Common control may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

No. MC 115092 (Sub-No. 27), filed July 12, 1973. Applicant: WEISS TRUCKING, INC., P.O. Box O, Vernal, Utah 84078. Applicant's representative: Mark K. Boyle, 345 South State Street, Salt Lake City, Utah 84111. Authority sought to operate as a *common carrier*, by motor vehicles, over irregular routes, transporting: *Cheese and cheese products*, between the plantsite of L. D. Schreiber Cheese Co., Inc., at Logan, Utah, and points in Arizona, California, Idaho, Montana, Nevada, Oregon, and Washington, restricted to the transportation of traffic originating at or destined to the named plantsite.

NOTE.—Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Green Bay, Wis., or Chicago, Ill.

No. MC 115157 (Sub-No. 2), filed August 6, 1973. Applicant: LONG'S HAULING COMPANY, INC., 128 Friendship Ave., Duquesne, Pa. 15110. Applicant's representative: Jerome Solomon, 3131 United States Steel Building, Pittsburgh, Pa. 15219. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Coal* in dump vehicles, from points in Monongalia, Brooke, Harrison, and Marshall Counties, W. Va., and from points in Guernsey and Belmont Counties, Ohio, to points in Allegheny, Washington, and Westmoreland Counties, Pa., under contract with Pittsburgh Coal Company, a Division of Consolidation Coal Company.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at Pittsburgh, Pa.

No. MC 115379 (Sub-No. 44), filed July 8, 1973. Applicant: JOHN D. BOHR, INC., P.O. Box 217, Annville, Pa. 17003. Applicant's representative: Christian V. Graf, 407 North Front Street, Harrisburg, Pa. 17101. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meat scrap, poultry byproduct meal and feather meal*, in bulk, (1) from points in Pennsylvania, to points in Indiana, North Carolina, Michigan, Minnesota, Ohio, and Wisconsin; and (2) from points in Delaware, Maryland, and Virginia, to points in Indiana, Michigan, Minnesota, Ohio, Pennsylvania, and Wisconsin, restricted to transportation originating at the named origin states and destined to the named destination states.

NOTE.—Applicant states that the requested authority cannot or will not be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Harrisburg, Pa., or Washington, D.C.

No. MC 115491 (Sub-No. 127), filed August 6, 1973. Applicant: COMMERCIAL CARRIER CORPORATION, 502 East Bridgers Avenue, Post Office Drawer 67, Auburndale, Fla. 33823. Applicant's representative: Troy G. Russell (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Frozen citrus concentrates*, from points in Marion, Lake, Pasco, Polk, and Orange Counties, Fla., to Tampa, Miami, Port Everglades, Jacksonville, and Port Canaveral, Fla., and (2) *frozen citrus concentrates, canned juices, and flavoring*, from Tampa, Miami, Port Everglades, Jacksonville, and Port Canaveral, Fla., to points in Marion, Lake, Pasco, Polk, and Orange Counties, Fla., restricted to shipments having a subsequent movement by water in (1) above and shipments having a prior movement by water in (2) above.

NOTE.—Common control may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Tampa, Fla.

No. MC 117765 (Sub-No. 163), filed July 23, 1973. Applicant: HAHN TRUCK LINE, INC., 5315 NW. 5th, P.O. Box 75267, Oklahoma City, Okla. 73107. Applicant's representative: R. E. Hagan (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Nonfrozen foodstuffs*, in containers (except meats and meat products, meat byproducts, dairy products, and articles distributed by meat packing houses), from (1) the plantsite of Big Stone Canning Company at Bloomer, Wis., to points in Alabama, Arkansas, Kansas, Louisiana, Mississippi, Missouri, Oklahoma, Tennessee, and Texas, and (2) the plantsite of Friday Canning Company Corporation at New Richmond, Wis., to points in Arkansas, Kansas, and Missouri.

NOTE.—Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary,

applicant requests it be held at Oklahoma City, Okla.

No. MC 117815 (Sub-No. 212), filed July 17, 1973. Applicant: PULLEY FREIGHT LINES, INC., 405 SE. 20th Street, Des Moines, Iowa 50317. Applicant's representative: Larry D. Knox, 9th Floor, Hubbell Building, Des Moines, Iowa 50309. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Such merchandise* as is dealt in by wholesale grocery and good business houses (except commodities in bulk), from Des Moines, Iowa, to Davenport and Dubuque, Iowa, and Dixon, Geneseo, Moline, Mt. Morris, Rock Island, and Sterling, Ill.

NOTE.—Common control was approved in No. MC-F-11497.

Applicant states that the requested authority can be tacked with its existing authority in Sub-No. 2 at (A) Des Moines, Iowa, to provide a through service from Omaha, Nebr., to the destination states named above; (B) at Davenport, Iowa, to provide a through service from Des Moines, Iowa, to Chicago, Ill.; and (C) pursuant to a proceeding in MC-F-11497 (MC-128548), at Mt. Morris and Dixon, Ill., to serve points in northern Illinois. If a hearing is deemed necessary, applicant requests it be held at Omaha, Nebr.

No. MC 118288 (Sub-No. 43), filed July 2, 1973. Applicant: STEPHEN F. FROST, 14750 Boyle Ave., P.O. Box 28, Fontana, Calif. 92335. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Grain products* and (2) *grain*, when moving in the same vehicle with grain products, from points in Montana to points in Wyoming, Colorado, New Mexico, Arizona, Utah, Idaho, Nevada, California, Oregon, and Washington.

NOTE.—Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Minneapolis, Minn.

No. MC 119777 (Sub-No. 258), filed June 1, 1973. Applicant: LIGON SPECIALIZED HAULER, INC., P.O. Drawer L, Madisonville, Ky. 42431. Applicant's representative: Carl U. Hurst, P.O. Box E, Bowling Green, Ky. 42101. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities*, in cargo containers, and in boxes or crates made of wood, lumber, or plywood; and (2) *empty cargo containers*, between Newport, Ky., on the one hand, and, on the other, points in the United States (except Alaska and Hawaii).

NOTE.—Common control may be involved. Applicant holds contract carrier authority under MC 126970 Subs 1 and 3, therefore dual operations may be involved.

Applicant states that the requested authority can be tacked at Newport, Ky., to provide a through service to and from points in Illinois, Indiana, and Kentucky, on the transportation of building and excavating contractors' and mining machinery and equipment, road building equipment and machinery, and commodities which because of size or weight require the use of special equipment. Applicant further indicates that it has no present intention to tack. Persons interested in the tacking possibilities are cautioned that failure to oppose the application may result in an unrestricted grant of authority. If a hearing is deemed necessary, applicant requests it be held at Louisville, Ky.

No. MC 123329 (Sub-No. 23), filed June 18, 1973. Applicant: H. M. TRIMBLE & SONS, LTD., 4056 Ogden Road Southeast, Calgary, Alberta, Canada. Applicant's representative: Ray F. Koby, 314 Montana Building, Great Falls, Mont. 59401. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Commodities* in bulk, between the ports of entry on the International Boundary line between the United States and Canada located in Washington, on the one hand, and, on the other, points in California, Oregon, and Washington.

NOTE.—Common control and dual operations may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at any location in the State of Washington.

No. MC 124328 (Sub-No. 55) (CORRECTION), filed June 26, 1973, published in the FEDERAL REGISTER issue of August 23, 1973, and republished, as corrected, this issue. Applicant: BRINK'S INCORPORATED, 234 East 24th Street, Chicago, Ill. 60616. Applicant's representative: John G. O'Keefe, O'Hara Plaza, Suite 650, 5725 East River Road, Chicago, Ill. 60631. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Silver bullion, precious metals, coin, and rare earths*, between points in the Chicago, Ill., Commercial Zone and Indiana, on the one hand, and, on the other, New York City, and West Point, N.Y., Newark, N.J., and points in Essex, Middlesex, and Union Counties, N.J., under contract with Modatta Metals Corporation, Lee B. Stern and Co., Eisen & Blum, Inc., and General Services Administration.

NOTE.—Common control may be involved. The purpose of this republication is to indicate that applicant is under contract with the above-named shippers, which was inadvertently omitted in the previous publication. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill.

No. MC 124565 (Sub-No. 6), filed August 6, 1973. Applicant: JOHN LONG TRUCKING, INC., 1030 Denton Street, Sapulpa, Okla. 74066. Applicant's representative: Wilburn L. Williamson, 280 National Foundation Life Bldg., 3535 NW. 58th Street, Oklahoma City, Okla. 73112. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Glass products*, from Sapulpa, Okla., to points in Colorado and those points in Texas on and west of U.S. Highway 281, under a continuing contract or contracts with Liberty Glass Company.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at Oklahoma City or Tulsa, Okla.

No. MC 125518 (Sub-No. 4), filed June 27, 1973. Applicant: CLETUS RUHLMAN, doing business as C. RUHLMAN TRUCKING COMPANY, 265 South Riverside Drive, New Miami, Ohio 45012. Applicant's representative: Norbert B. Flick, Executive Building, Cincinnati, Ohio 45202. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Slag*, in bulk, in dump vehicles, from Hamilton, Ohio, to Alexandria, Ind., under contract with American Materials Corporation.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at Cincinnati, Hamilton, or Columbus, Ohio.

No. MC 128075 (Sub-No. 29), filed July 29, 1973. Applicant: LEON JOHNSRUD, 757 2nd Street West, P.O. Box 447, Cresco, Iowa 52136. Applicant's representative: Val M. Higgins, 1000 First National Bank Building, Minneapolis, Minn. 55402. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Iron and steel* for use in the manufacture of air cleaners and air cleaner elements, from Chicago, Ill., and Milwaukee, Wis., to Cresco and Oelwein, Iowa.

NOTE.—Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Des Moines, Iowa, or Minneapolis, Minn.

No. MC 128114 (Sub-No. 4), filed July 27, 1973. Applicant: PAUL E. SAVAGE, doing business as SAVAGE TRANSPORTATION CO., Building 141, Pasco Airport, Pasco, Wash. 99302. Applicant's representative: Donald A. Ericson, 708 Old National Bank Building, Spokane, Wash. 99201. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Animal feed, poultry feed, and feed ingredients*, between points in Walla Walla County, Wash., on the one hand, and, on the other, points in Idaho, Montana, and Oregon.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at either Spokane or Seattle, Wash., or Portland, Oreg.

No. MC 128383 (Sub-No. 31), filed June 6, 1973. Applicant: PINTO TRUCKING SERVICE, INC., 1414 Calcon Hook Road, Sharon Hill, Pa. 19079. Applicant's representative: Gerald K. Gimmel, P.O. Box 824, Gaithersburg, Md. 20760. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except commodities in bulk, Classes A and B explosives, and motor vehicles requiring the use of special equipment), between Dulles International Airport, located in Fairfax and Loudon Counties, Va., the Greensbiro-High Point-Winston-Salem Airport, N.C., Douglas Municipal Airport at or near Charlotte, N.C., the Hartsfield International Airport at or near Atlanta, Ga., and the Miami International Airport at or near Miami, Fla.; restricted to the transportation of

traffic having a prior or subsequent movement by air or moving in a substitute for air service.

NOTE.—Applicant states that the requested authority can be tacked with its existing authority at Dulles International Airport and provide a through service between the points named in the instant application, and Friendship International Airport, Anne Arundel County, Md., Washington National Airport, Gravelly Point, Va., LaGuardia Airport and John F. Kennedy International Airport, N.Y., Newark Airport, Newark, N.J., and Philadelphia International Airport, Philadelphia, Pa. via a Dulles International Airport gateway, but indicates that it has no *present* intention to tack. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

No. MC 129729 (Sub-No. 4) (AMENDMENT), filed May 29, 1973, published in the FEDERAL REGISTER issue of June 28, 1973, and republished, as amended this issue. Applicant: FRANCIS J. BEAROFF, INC. (Swedeland Road), P.O. Box 195, King of Prussia, Pa. 19406. Applicant's representative: Raymond A. Thistle, Jr., Suite 1012, Four Penn Center Plaza, Philadelphia, Pa. 19103. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Ferro alloys* (except in bulk, in dump vehicles), (1) from Camden, N.J., to Swedeland, Pa., and Claymont, Del.; and (2) from Swedeland, Pa., to Claymont, Del.

NOTE.—The purpose of this republication is to indicate applicant's additional request for authority as described in (2) above.

Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Philadelphia, Pa. The order of August 22, 1973, by which this proceeding was directed for handling under modified procedure is vacated and set aside by order dated September 4, 1973.

No. MC 134477 (Sub-No. 37), filed July 23, 1973. Applicant: SCHANNO TRANSPORTATION, INC., 5 West Mendota Road, West St. Paul, Minn. 55118. Applicant's representative: Thomas Fischbach (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, 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, from the facilities of Missouri Beef Packers, Inc., at or near Boise, Idaho, to points in Connecticut, Illinois, Iowa, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Texas, and Wisconsin, restricted to traffic originating at the above named origins.

NOTE.—Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Boise, Idaho, or Denver, Colo.

No. MC 135152 (Sub-No. 10) (CORRECTION), filed July 16, 1973, published in the FEDERAL REGISTER issue of August 30, 1973, and annotated in republication this issue. Applicant: CASKET DISTRIBUTORS, INC., Rural Route #2, West Harrison, Ind. 45030. Applicant's representative: Jack B. Josselson, 700 Atlas Bank Building, Cincinnati, Ohio 45202.

NOTE.—The docket number assigned to this proceeding is No. MC-135152 (Sub-No. 10), in lieu of No. MC-135152 (Sub-No. 1) which was erroneously indicated in the FEDERAL REGISTER publication of August 30, 1973. The notice of the request for authority remains as previously published.

No. MC 135170 (Sub-No. 1), filed July 6, 1973. Applicant: TRI-STATE ASSOCIATES, INC., P.O. Box 188, Federalsburg, Md. 21632. Applicant's representative: James C. Hardman, 127 North Dearborn Street, Chicago, Ill. 60602. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Containers, container ends and accessories, and material, equipment, and supplies* used in connection with the manufacture, sale, and distribution of containers, from points in Virginia, New Jersey, Pennsylvania, and North Carolina, to points in Maryland, under a continuing contract, or contracts with Continental Can Company, Inc.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at Washington, D.C., or New York, N.Y.

No. MC 135562 (Sub-No. 5), filed May 4, 1973. Applicant: O.C.C., INC., 2201 Sixth Avenue South, Seattle, Wash. 98134. Applicant's representative: Joseph O. Earp, 607 Third Avenue, Seattle, Wash. 98104. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Parts of mobile homes and utility trailers, automotive springs, suspensions, and parts thereof, brake assemblies and parts thereof, wheels and wheel attaching parts, and parts for motor vehicle chassis and motor vehicle undercarriage*, from Detroit, Jackson, and Romulus, Mich., Elkhart, Ind., Rockford, Ill., Davenport, Iowa, and Milwaukee, Wis., to points in Arizona, California, Colorado, Utah, New Mexico, Idaho, Montana, Nevada, Oregon, Washington, and Wyoming; (2) *axles and axle suspension components*, from Chino, Calif., to Detroit, Jackson, and Romulus, Mich., Elkhart, Ind., Rockford, Ill., Davenport, Iowa, and Milwaukee, Wis.; and (3) *empty pallets*, on return in (1) and (2) above, under contract with Kelsey-Hayes Company.

NOTE.—Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at Seattle, Wash.

No. MC 136318 (Sub-No. 10), filed July 16, 1973. Applicant: COYOTE TRUCK LINE, INC., 395½ West Fleming Drive, Morganton, N.C. 28655. Applicant's representative: Walter F. Jones, Jr., 601 Chamber of Commerce Bldg., Indianapolis, Ind. 46204. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Household furniture*, from Marion, High Point, Morganton, and Spruce Pine, N.C., to points in Washington, Oregon, Montana, Nevada, Utah, Idaho, Wyoming, New Mexico, Kansas, Nebraska, North Dakota, and South Dakota, under contract with Henredon Furniture Industries, Inc.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at Washington, D.C., or Raleigh, N.C.

No. MC 138052 (Sub-No. 2), filed July 20, 1973. Applicant: GOLD COAST TRUCKING, INC., 140 North Hill St., Albany, Oreg. 97321. Applicant's representative: Robert G. Simpson, 1200 Standard Plaza, Portland, Oreg. 97204. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Malt beverages*, from Phoenix, Ariz., to points in Oregon.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at Portland, Oreg., or Phoenix, Ariz.

No. MC 138144 (Sub-No. 2) (AMENDMENT), filed June 21, 1973, published in the FEDERAL REGISTER issue of August 2, 1973, and republished, as amended this issue. Applicant: FRED OLSON CO., INC., 6022 West State Street, Milwaukee, Wis. 53213. Applicant's representative: Eugene L. Cohn, One North LaSalle Street, Room 2255, Chicago, Ill. 60602. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Iron and steel articles*, between Chicago, Chicago Heights, Joliet, and Waukegan, Ill., and Gary, Ind., on the one hand, and, on the other, points in Iowa, Missouri, Nebraska, and Kansas.

NOTE.—The purpose of this republication is to add Chicago Heights, Ill., to the base territory as described above. Common control may be involved. Applicant states that the requested authority can be tacked with its existing authority at Chicago, Ill., to serve presently authorized points in Indiana, Illinois, and Wisconsin. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill., or Washington, D.C.

No. MC 138512 (Sub-No. 1), filed July 26, 1973. Applicant: ROLAND'S TRANSPORTATION SERVICES, INCORPORATED, doing business as WISCONSIN PROVISIONS EXPRESS, 3383 East Layton Avenue, Cudahy, Wis. 53110. Applicant's representative: Richard C. Alexander, 710 North Plankinton Avenue, Milwaukee, Wis. 53203. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Dairy products* (except in bulk in tank vehicles), *and equipment, materials, and supplies* used in the manufacture of dairy products, between points in Arkansas, California, Idaho, Illinois, Iowa, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, Nevada, Oregon, South Dakota, Tennessee, Utah, Washington, and Wisconsin, under contract with L. D. Schreiber

Cheese Co., Inc., located at Green Bay, Wis.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at Milwaukee, Wis.

No. MC 138869 (Sub-No. 2), filed July 5, 1973. Applicant: W. T. MYLES TRANSPORTATION COMPANY, a Corporation, 4481 Moreland Avenue, P.O. Box 321, Conley, Ga. 30027. Applicant's representative: Archie B. Culbreth, Suite 246, 1252 West Peachtree St. NW., Atlanta, Ga. 30309. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Plumbers' goods, fixtures, and supplies*, such as lavatories, basins, legs, and pedestals, urinals, urinal gutters or stalls, water closet bowls and tanks, and bathroom or lavatory fixtures, china or earthenware, and related articles, from (a) Marysville and Perrysville, Ohio, Ford City, Pa., and Tupelo, Miss., to points in Clayton, Cobb, De Kalb, Fulton, and Gwinnett Counties, Ga., (b) Ford City, Pa., and Tupelo, Miss., to points in Florida on and north of Florida Highway 60, (c) Abingdon and Robinson, Ill., to points in South Carolina on and west of U.S. Highway 1, and (d) Monroe, Ga., to points in North Carolina and points in South Carolina on and west of U.S. Highway 1, (2) *fittings, and fixtures for commodities in (1) above*, brass, bronze, iron, or steel, from Marysville, Ohio, to points in Clayton, Cobb, De Kalb, Fulton, and Gwinnett Counties, Ga., (3) *bath tubs, lavatories, and sinks*, cast iron or steel, from Salem, Ohio, to points in Clayton, Cobb, De Kalb, Fulton, and Gwinnett Counties, Ga., and points in Florida on and north of Florida Highway 60, (4) *water heaters*, from Ashland City and Johnson City, Tenn., to points in Clayton, Fulton, and Gwinnett Counties, Ga., and Jacksonville, Fla., (5) *cast iron pipe and fittings*, (a) from Charlotte, N.C., and Chattanooga, Tenn., to points in Clayton, Cobb, De Kalb, Fulton and Gwinnett Counties, Ga., and (b) from Charlottee, N.C., to points in South Carolina on and west of U.S. Highway 1, (6) *copper tubing*, from East St. Louis, Ill., and Reading, Pa., to points in Fulton and Gwinnett Counties, Ga., Jacksonville, Fla., points in North Carolina, and those in South Carolina on and west of U.S. Highway 1, (7) *shower stalls*, plastic or fibreglass, from Union Point, Ga., to points in South Carolina on and west of U.S. Highway 1, and (8) commodities named in (1) through (7) above between shippers warehouses at Anderson, S.C., Charlotte, N.C., College Park and Lawrenceville, Ga., and Jacksonville, Fla., under contract with Parnell-Martin Supply Company and Subsidiaries.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at Atlanta, Ga.

No. MC 138882 (Sub-No. 1), filed July 9, 1973. Applicant: WILEY SANDERS, INC., 212 South Oak Street, Troy, Ala. 36081. Applicant's representative: John W. Cooper, 1301 City Federal Building, Birmingham, Ala. 35203. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Scrap batteries*, from points in Florida, Georgia, South Carolina, and North Carolina, to the plantsite of Sanders Lead Co., Inc., at Troy, Ala., and (2) *pallets*, from the plantsite of Troy Box and Pallet, Inc., at Troy, Ala., to points in Florida, Georgia, South Carolina, and North Carolina.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at Panama City, Fla., or Birmingham, Ala.

No. MC 138963 (Sub-No. 1), filed July 20, 1973. Applicant: JAY ROZELL, doing business as ROZELL TRUCK LINES, 1003 Cedar, Minco, Okla. 73059. Applicant's representative: Rufus H. Lawson, 2400 Northwest 23rd Street, P.O. Box 75124, Oklahoma City, Okla. 73107. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Portable cattle feeders*, on wheels, and *component parts* for portable cattle feeders, from Canadian and Grady Counties, Okla., to points in Alabama, Arizona, Arkansas, Colorado, Florida, Georgia, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Nebraska, New Mexico, Nevada, North Dakota, South Dakota, Tennessee, Texas, Utah, and Wyoming.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at Oklahoma City or Tulsa, Okla.

No. MC 138987, filed July 9, 1973. Applicant: MEIER TRUCKING COMPANY, a Corporation, Rural Route No. 4, Pontiac, Ill. 61764. Applicant's representative: William J. Boyd, 29 South LaSalle Street, Suite 330, Chicago, Ill. 60603. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Limestone, fertilizer, nitrogen solution, and agricultural chemicals*, from points in Illinois, to points in Michigan, Indiana, Kentucky, Ohio, Missouri, Wisconsin, and Iowa.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill.

No. MC 139025, filed July 12, 1973. Applicant: ARTHUR WHITE, Moores Mills, New Brunswick, Canada. Applicant's representative: George F. O'Connell, 40 Charlotte Street, St. John, New Brunswick, Canada. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Woodchips*, in bulk, from the ports of entry on the International Boundary line between the United States and Canada located at or near York and Charlotte Counties, New Brunswick, Canada, to the plantsite and facilities of Georgia Pacific Corp., located at or near Woodland, Maine, under contract with Georgia Pacific Corp.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at either Bangor, Augusta, or Portland, Maine.

By the Commission.

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

[FR Doc.73-19404 Filed 9-12-73;8:45 am]

[Notice 340]

ASSIGNMENT OF HEARINGS

SEPTEMBER 10, 1973.

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 September 13, 1973.

MC-F-11890, Howard Sober, Inc.—Purchase (Portion)—Insured Transporters, Inc., now assigned October 17, 1973, at Washington, D.C., is postponed to October 23, 1973, at the Offices of the Interstate Commerce Commission, Washington, D.C.

No. 35828, Aluminum Company of Canada, Ltd., V. The Alma & Jonwuiere Railway Co. Et Al., now being assigned hearing October 15, 1973, at the Offices of the Interstate Commerce Commission, Washington, D.C.

No. 35794, Northville Dock Pipe Line Corp. and Consolidated Petroleum Terminal, Inc.—Petition For Declaratory Order or Investigation, No. 35852, Northville Dock Pipe Line Corp., Northville Industries Corp., Consolidated Petroleum Terminal, Inc. and Total Resources, Inc.—Investigation of Operations, now being assigned November 5, 1973, at New York, New York, in a hearing room to be later designated.

MC-74 Sub 9, Valley Transit Company, Inc., now being assigned hearing October 8, 1973 (2 weeks), at the Sheraton Fairway Motor Hotel, 21-5 South 10th Street, McAllen, Texas.

MC-C-7980, Robert B. Wood, Northern Auto Supply, Inc., and St. Johnsbury Beverage Co., Investigation of Operations and Practices, now assigned September 11, 1973, at Boston, Mass., is cancelled.

MC-128383 Sub 30, Pinto Trucking Service, Inc., now being assigned October 23, 1973, at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC-138340, Westfied Enterprises, Inc., d.b.a. Maryland Container Transport, now being assigned November 5, 1973, at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC-128383 Sub 29, Pinto Trucking Service, Inc., now being assigned November 6, 1973, at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC-119632 Sub 56, Reed Lines, Inc., now assigned September 13, 1973, at Columbus, Ohio, is cancelled and transferred to modified procedure.

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

[FR Doc.73-19502 Filed 9-12-73;8:45 am]

[Notice No. 351]

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 October 3, 1973. Pursuant to section 17(8) of the Interstate Commerce Act, the filing of such a petition will postpone the effective date of the order in that proceeding pending its disposition. The matters relied upon by petitioners must be specified in their petitions with particularity.

No. MC-FC-74574. By order of September 7, 1973, the Motor Carrier Board approved the transfer to Thayer's Westboro & Boston Express, Inc., 15 Grove Street, Hopkinton, Mass., of the operating rights in Certificate No. MC-69590 issued April 21, 1961, to Edward E. Buxton, doing business as Buxton's Worcester & Westboro Express, 10 Walnut Street, Shrewsbury, Mass., authorizing the transportation of general commodities, with exceptions, between Worcester, Mass., and Westboro, Mass., serving the intermediate points of Northboro and Shrewsbury, Mass.

No. MC-FC-74575. By order of September 7, 1973, the Motor Carrier Board approved the transfer to Garfield Heights Coach Line, Inc., Bedford, Ohio 44146, of Certificate No. MC-3971 issued June 8, 1967, to Ohio Trailways, Inc., Zanesville, Ohio 45056, authorizing the transportation of passengers and their baggage, and express, newspapers, and mail in the same vehicle with passengers, between Zanesville, Ohio, and Coshocton, Ohio, serving all intermediate points, over specified highways; between Zanesville, Ohio, and Wooster, Ohio, serving all intermediate points, over specified highways; between Wooster, Ohio, and Cleveland, Ohio, serving all intermediate points, over specified highways; and passengers and their baggage, and express and newspapers in the same vehicle with passengers, between Zanesville, Ohio, and Corning, Ohio, serving all intermediate points, over specified highways; between Corning, Ohio, and Athens, Ohio, serving all intermediate points, over specified highways; and between Athens, Ohio, and Huntington, W. Va., serving all intermediate points, over specified highways. Langdon D. Bell, 218 East State Street, Columbus, Ohio 43215, attorney for applicants.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.73-19503 Filed 9-12-73;8:45 am]

[Notice No. 122]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

SEPTEMBER 7, 1973.

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 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 20783 (Sub-No. 92 TA), filed August 23, 1973. Applicant: TOMPKINS MOTOR LINES, INC., P.O. Box 1830, Highway 77, Gadsden, Ala. 35902. Applicant's representative: Christian V. Graf, 407 North Front Street, Harrisburg, Pa. 17101. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Canned and preserved foodstuffs*, from the distribution facility of Heinz U.S.A. at Greenville, S.C., to points in Alabama, Georgia, and Tennessee, restricted to traffic originating at and destined to the points and territories shown, for 180 days. SUPPORTING SHIPPER: Heinz U.S.A., Division of H. J. Heinz Company, P.O Box 57, Pittsburgh, Pa. 15230. SEND PROTESTS TO: Clifford W. White, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 814, 2121 Building, Birmingham, Ala. 35203.

No. MC 30844 (Sub-No. 476 TA), filed August 23, 1973. Applicant: KROBLIN REFRIGERATED XPRESS, INC., 2125 Commercial Street, P.O. Box 5000 (Box zip 50704), Waterloo, Iowa 50702. Applicant's representative: Paul Rhodes (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, meat byproducts and articles distributed by meat packinghouses* as described in Sections A and C of Appendix I to the report in *Description in Motor Carrier Certificates*, 61 MCC 209 and 766 (except hides and commodities in bulk, in tank vehicles), from the plant site of Madison Foods, Inc., at Madison, Nebr., to points in Alabama, Connecticut, the District of Columbia, Indiana, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Mississippi, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Tennessee, Texas, Vermont, Virginia, and West Virginia, restricted to shipments originating at Madison, Nebr., and destined to the above named states, for 180 days. SUPPORTING SHIPPER: Armour and Company, Greyhound Tower, Phoenix, Ariz. 85077. SEND PROTESTS TO: Herbert W. Allen, Transportation Specialist, Interstate Commerce Commission, Bureau of Operations, 875 Federal Bldg., Des Moines, Iowa 50309.

No. MC 85465 (Sub-No. 57 TA), filed August 27, 1973. Applicant: WEST NEBRASKA EXPRESS, INC., P.O. Drawer 952, 5th Avenue and 5th Street, Scottsbluff, Nebr. 69361. Applicant's representative: C. J. Boddington, 2800 West Bayshore Road, Palo Alto, Calif. 94303. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meat, meat products, meat byproducts* (except hides) *and articles distributed by meat packing houses* as defined in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 MCC 209 and 766, from the plant site and storage facilities of Madison Foods, Inc., at Madison, Nebr., to points in Kentucky, Virginia, West Virginia, Pennsylvania, New York, Massachusetts, Connecticut, Rhode Island, Vermont, New Hampshire, Maine, Indiana, Ohio, Delaware, New Jersey, Maryland, and the District of Columbia, for 180 days. SUPPORTING SHIPPER: Donald A. Chute, Manager, Transportation and Distribution, Fresh Meats Division, Greyhound Tower, Phoenix, Ariz. 85077. SEND PROTESTS TO: Max H. Johnston, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 320 Federal Building and Court House, Lincoln, Nebr. 68508.

No. MC 92068 (Sub-No. 9 TA), (CORRECTION), filed August 8, 1973, published in the FEDERAL REGISTER issue of August 22, 1973, and republished as corrected this issue. Applicant: MUTUAL TRANSPORTATION, INCORPORATED, President and Fleet Sts., Baltimore, Md. 21202. Applicant's representative: Walter T. Evans, 1111 E St. NW., Washington, D.C. 20004.

NOTE.—The purpose of this partial republication is to show that applicant now seeks to operate as a *common carrier*, in lieu of a contract carrier, which was published in error. The rest of the application remains the same.

No. MC 107403 (Sub-No. 856 TA), filed August 22, 1973. Applicant: MATLACK, INC., 10 West Baltimore Ave., Lansdowne, Pa. 19050. Applicant's representative: John Nelson (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Plastic resin*, in bulk, in tank vehicles, from Holland, N.Y., to Corry, Erie, Franklin, and Warren, Pa., and Buffalo, Jamestown, Lockport, and Rochester, N.Y., for 180 days. SUPPORTING SHIPPER: Thomas N. Gotro, Purchasing Agent, Fisher Price Toys, Div. of Quaker Oats, Holland, N.Y. 14080. SEND PROTESTS TO: Ross A. Davis, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 600 Arch Street, Room 3238, William J. Green, Jr., Federal Bldg., Philadelphia, Pa. 19106.

No. MC 108053 (Sub-No. 122 TA), filed August 27, 1973. Applicant: LITTLE AUDREY'S TRANSPORTATION COMPANY, INC., 1520 West 23rd Street, Mail: P.O. Box 129, Fremont, Nebr. 68025. Applicant's representative: R. W. Pritzke (Same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, and meat byproducts, and articles distributed by meat packinghouses*, as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except commodities in bulk, in tank vehicles and hides), from the plant site of Madison Foods, Inc., at or near Madison, Nebr., to points in Arizona, California, Colorado, Idaho, Montana, New Mexico, Nevada, Oregon, Utah, Washington, and Wyoming, for 180 days. SUPPORTING SHIPPER: Armour and Company, Donald A. Chute, Manager, Transportation & Distribution, Fresh Meats Division, Greyhound Tower, Phoenix, Ariz. 85077. SEND PROTESTS TO: District Supervisor Carroll Russell, Bureau of Operations, Interstate Commerce Commission, 711 Federal Office Bldg., Omaha, Nebr. 68102.

No. MC 113545 (Sub-No. 11 TA), filed August 27, 1973. Applicant: CORMETT FORWARDING CO., INC., 19th Street and Park Avenue, Weehawken Branch, Weehawken, N.J. 07087. Applicant's representative: Morton E. Kiel, Suite 6193, 5 World Trade Center, New York, N.Y. 10048. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Radiopharmaceuticals and medical isotopes*, from Carlstadt, N.J., to New York, N.Y., and points in Nassau and Suffolk Counties, N.Y., for 180 days. SUPPORTING SHIPPER: Mallinckrodt Chemical Works, Box 10172, Lambert Field, St. Louis, Mo. 63145. SEND PROTESTS TO: District Supervisor Robert E. Johnston, Interstate Commerce Commission, Bureau of Operations, 9 Clinton St., Newark, N.J. 07102.

No. MC 113678 (Sub-No. 507 TA), filed August 24, 1973. Applicant: CURTIS, INC., Off.: 4810 Pontiac Street, Commerce City (Denver) Colo. 80022, and Mail: P.O. Box 16004, Stockyards Station, Denver, Colo. 80216. Applicant's representative: David L. Metzler (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, and meat byproducts, and articles distributed by meat packinghouses*, as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 MCC 209 and 766 (except hides and commodities in bulk, in tank vehicles), from the plant site of Madison Foods, Inc., at Madison, Nebr., to points in Arizona, California, Colorado, Idaho, New Mexico, Montana, Nevada, Oregon, Utah, Washington, Wyoming, Virginia, Maryland, Delaware, New Jersey, New York, Pennsylvania, Connecticut, Rhode Island, Massachusetts, Vermont, New Hampshire, Maine, and the District of Columbia, for 180 days. SUPPORTING SHIPPER: Armour and Company, Fresh Meats Division, Greyhound Tower, Phoenix, Ariz. 85077. SEND PROTESTS TO: District Supervisor Herbert C. Ruoff, Interstate Commerce Commission, Bureau of Operations, 2022 Federal Building, Denver, Colo. 80202.

No. MC 115322 (Sub-No. 94 TA), filed August 27, 1973. Applicant: REDWING REFRIGERATED, INC., P.O. Box 10177, Off.: Highway 527, Taft, Fla. 32809. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen baked squash*, when moving in mixed shipments with *potatoes and potato products*, from the plantsite and storage facilities of Penobscot Frozen Foods, Inc., Belfast, Maine, to Secaucus, Newark, and Jersey City, N.J.; Philadelphia, Pa.; and Landover and Baltimore, Md.; and points in Virginia, North Carolina, South Carolina, Tennessee, Georgia, Florida, Alabama, Mississippi, and Louisiana, for 180 days. SUPPORTING SHIPPER: Penobscot Frozen Foods, Inc., P.O. Box 229, Belfast, Maine 04915. SEND PROTESTS TO: District Supervisor G. H. Fauss, Jr., Interstate Commerce Commission, Bureau of Operations, Box 35008, 400 W. Bay Street, Jacksonville, Fla. 32202.

No. MC 115826 (Sub-No. 252 TA), filed August 27, 1973. Applicant: W. J. DIGBY, INC., 1960 31st Street, P.O. Box 5088, Terminal Annex, Denver, Colo. 80216. Applicant's representative: Ezekial Gomez (same address as applicant). 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 MCC 209 and 766 (except hides and commodities in bulk, in tank vehicles), from the plant site of Madison Foods, Inc., at Madison, Nebr., to points in Alabama, Arizona, California, Colorado, Georgia, Idaho, Montana, New Mexico, Nevada, North Carolina, Oregon, South Carolina, Tennessee, Utah, Florida, Virginia, Washington, and Wyoming, for 180 days. SUPPORTING SHIPPER: Armour and Company, Fresh Meats Division, Greyhound Tower, Phoenix, Ariz. 85077. SEND PROTESTS TO: District Supervisor Herbert C. Ruoff, Interstate Commerce Commission, Bureau of Operations, 2022 Federal Building, Denver, Colo. 80202.

No. MC 116077 (Sub-No. 348 TA), filed August 23, 1973. Applicant: ROBERTSON TANK LINES, INC., 2000 W. Loop South, Suite 1800, Houston, Tex. 77027. Applicant's representative: J. C. Browder (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Chromic sulphuric solutions and etchants*, in bulk, in hypalon lined tank trailers between the plantsite of Southern California Chemical, Garland, Tex., on the one hand, and, on the other, Springfield, Mo.; Fort Lauderdale, Fla., and Pompano Beach, Fla., for 180 days. SUPPORTING SHIPPER: Southern California Chemical Co., Inc., 1000 Profit Drive, Garland, Tex. 75040. SEND PROTESTS TO: District Supervisor John Mensing, Interstate Commerce Commission, Bureau of Operations, Room 8610, Federal Bldg., 515 Rusk Ave., Houston, Tex. 77002.

No. MC 117815 (Sub-No. 213 TA), filed August 22, 1973. Applicant: PULLEY FREIGHT LINES, INC., 405 SE. 20th Street, Des Moines, Iowa 50317. Applicant's representative: Jack Blanshan, 29 South La Salle St., Suite 330, Chicago, Ill. 60603. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, 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 Madison, Nebr., to points in Iowa, Wisconsin, Missouri, Illinois, Indiana, Ohio, and Michigan, for 180 days. SUPPORTING SHIPPER: Armour and Company, Greyhound Tower, Phoenix, Ariz., 85077. SEND PROTESTS TO: Herbert W. Allen, Transportation Specialist, Interstate Commerce Commission, Bureau of Operations, 875 Federal Bldg., Des Moines, Iowa 50309.

No. MC 118142 (Sub-No. 51 TA), filed August 27, 1973. Applicant: M. BRUENGER & CO., INC., 6250 North Broadway, Wichita, Kans. 67219. Applicant's representative: Lester C. Arvin, 814 Century Plaza Bldg., Wichita, Kans. 67202. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meat and meat byproducts and articles distributed by packinghouses*, from the plant and storage facilities of Hyplains Dressed Beef, Inc., Dodge City, Kansas., to points in Ohio, Pennsylvania, New Jersey, and New York, for 180 days. SUPPORTING SHIPPER: Hyplains Dressed Beef, Inc., Dodge City, Kans. SEND PROTESTS

TO: M. E. Taylor, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 501 Petroleum Building, Wichita, Kans. 67202.

No. MC 124692 (Sub-No. 116 TA), filed August 23, 1973. Applicant: SAMMONS TRUCKING, P.O. Box 1447, Missoula, Mont. 59801. Applicant's representative: Gene P. Johnson, 425 Gate City Bldg., Fargo, N. Dak. 58102. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Iron and steel articles* from the Minneapolis-St. Paul Commercial Zone, North Branch, Cambridge, Hutchinson, and Rush City, Minn., and La Crosse, Wis., to points in North Dakota and South Dakota, for 180 days. SUPPORTING SHIPPERS: Bethlehem Steel Corporation, Prudential Bldg., Chicago, Ill. 60601; Maxon Corporation, 500 Como Ave., St. Paul, Minn. 55103; and Paper, Calmenson & Company, Highway 280 at Highway 36, St. Paul, Minn. 55165. SEND PROTESTS TO: Paul J. Labane, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 222 U.S. Post Office Bldg., Billings, Mont. 59101.

No. MC 124692 (Sub-No. 117 TA), filed August 23, 1973. Applicant: SAMMONS TRUCKING, P.O. Box 1447, Missoula, Mont. 59801. Applicant's representative: Gene P. Johnson, 525 Gate City Building, Fargo, N. Dak. 58102. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Ceiling tile, insulating materials, siding, materials, sounding board, and materials for the installation thereof*, from the plantsite and facilities of Boise-Cascade Corp., at International Falls, Minn., to points in North Dakota, South Dakota, and Nebraska, for 180 days. SUPPORTING SHIPPER: Boise Cascade Corporation, P.O. Box 7747, Boise, Idaho 83707. SEND PROTESTS TO: Paul J. Labane, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 222 U.S. Post Office Building, Billings, Mont. 59101.

No. MC 124692 (Sub-No. 118 TA), filed August 23, 1973. Applicant: SAMMONS TRUCKING, P.O. Box 1447, Missoula, Mont. 59801. Applicant's representative: Gene P. Johnson, 425 Gate City Bldg., Fargo, N. Dak. 58102. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lumber*, from the plantsite and facilities of Homestake Forest Products Co., at Spearfish, S. Dak., to points in Minnesota and Wisconsin, for 180 days. SUPPORTING SHIPPER: Homestake Forest Products Co., P.O. Box 472, Spearfish, S. Dak. 57783. SEND PROTESTS TO: Paul J. Labane, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 222, U.S. Post Office Bldg., Billings, Mont. 59101.

No. MC 125996 (Sub-No. 39 TA), filed August 23, 1973. Applicant: ROAD RUNNER TRUCKING, INC., P.O. Box 37491, Omaha, Nebr. 68137. Applicant's representative: Arnold L. Burke, 127 North Dearborn St., Suite 1133, Chicago, Ill. 60602. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, and meat byproducts and articles distributed by meat packinghouses*, as described in Sections A and C of Appendix I to the report in "Descriptions in Motor Carrier Certificates," 61 M.C.C. 209 and 766 (except hides and Commodities in bulk, in tank vehicles), from the plantsite and storage facilities utilized by Madison Foods, Inc., Madison, Nebr., to points in Arizona, Colorado, California, Idaho, Montana, New Mexico, Nevada, Oregon, Utah, Washington, Wyoming, Connecticut, Maryland, Massachusetts, Maine, New Hampshire, New Jersey, New York, Ohio, Rhode Island, Pennsylvania, Vermont, West Virginia, Virginia, and the District of Columbia, restricted to traffic originating at the above named plantsite and storage facilities, for 180 days. SUPPORTING SHIPPER: Armour and Company, Donald A. Chute, Manager, Transportation & Distribution, Fresh Meats Division, Greyhound Tower, Phoenix, Ariz. 85077. SEND PROTESTS TO: Carroll Russell, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 711 Federal Office Building, Omaha, Nebr. 68102.

No. MC 129516 (Sub-No. 23 TA), filed August 24, 1973. Applicant: PATTON'S, INC., 2300 Canyon Road, Ellensburg, Wash. 98926. Applicant's representative: James T. Johnson, 1610 IBM Building, Seattle, Wash. 98101. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen pet food ingredients*, from ports of entry on the United States-Canada International Boundary line at Eastport, Idaho; Sweetgrass and Raymond, Mont.; Portal and Pembina, N. Dak., to points in California and Oregon, for 180 days. SUPPORTING SHIPPER: Standard Brands Food Company, 500 Sherbrooke St. West, Montreal, 111, P.Q., Canada. SEND PROTESTS TO: District Supervisor W. J. Huetig, Interstate Commerce Commission, Bureau of Operations, 450 Multnomah Building, 319 SW., Pine, Portland, Oreg. 97204.

No. MC 134477 (Sub-No. 38 TA), filed August 23, 1973. Applicant: SCHANNO TRANSPORTATION, INC., 5 West Mendota Road, West St. Paul, Minn. 55118. Applicant's representative: Thomas Fischbach (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Meats, meat products, meat byproducts, and articles distributed by meat packinghouses* (except hides and commodities in bulk) as described in Sections A and C of Appendix I to the report in "Descriptions in Motor Carrier Certificates," 61 M.C.C. 209 and 766, from Wagner, S. Dak., to points in Arizona, California, Colorado, Connecticut, Delaware, Idaho, Maine, Maryland, Massachusetts, Montana, Nevada, New Hampshire, New Jersey, New Mexico, New York, Oklahoma, Oregon, Pennsylvania, Rhode Island, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wyoming, and the District of Columbia and (2) *material, supplies, and equipment* used by meat packinghouses, including fresh meat (except commodities in bulk), from points in Arkansas, Colorado, Illinois, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, North Dakota, Oklahoma, Texas, and Wisconsin, to Wagner, S. Dak., for 180 days. RESTRICTIONS: Restricted in Part (1) to traffic originating at the plant site and storage facilities utilized by Yankton-Sioux Industries at Wagner, S. Dak. and in Part (2) to traffic originating at points in the named states and destined to the plant site and storage facilities utilized by Yankton-Sioux Industries at Wagner, S. Dak. SUPPORTING SHIPPER: Yankton Sioux Industries, 301 North Fifth Street, Minneapolis, Minn. 55403. SEND PROTESTS TO: District Supervisor A. N. Spath, Interstate Commerce Commission, Bureau of Operations, 448 Federal Building & U.S. Court House, 110 S. 4th Street, Minneapolis, Minn. 55401.

No. MC 134477 (Sub-No. 39 TA), filed August 23, 1973. Applicant: SCHANNO TRANSPORTATION, INC., 5 West Mendota Road, West St. Paul, Minn. 55118. Applicant's representative: Thomas Fischbach (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, 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 Madison Foods, Inc., at Madison, Nebr., to points in Connecticut, Delaware, the District of Columbia, Illinois, Indiana, Iowa, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia, and Wisconsin, for 180 days. SUPPORTING SHIPPER: Armour and Company, Fresh Meats Division, Greyhound Tower, Phoenix, Ariz. 85077. SEND PROTESTS TO: District Supervisor A. N. Spath, Interstate Commerce Commission, Bureau of Operations, 448 Federal Building & U.S. Court House, 110 S. 4th Street, Minneapolis, Minn. 55401. 55401.

No. MC 134783 (Sub-No. 9 TA), filed August 23, 1973. Applicant: DIRECT SERVICE, INC., P.O. Box 786, Dimmett Highway West, Plainview, Tex. 79072. Applicant's representative: Ronald V. Dreckman (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meat, meat products, and meat byproducts and articles distributed by meat packinghouses* 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, from the plantsite of John Morrell & Company at or near Lubbock, Tex., to points in Alabama, Connecticut, Florida, Georgia, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Mississippi, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia, and Washington, D.C., for 180 days. SUPPORTING SHIPPER: Robert E. Lee, John Morrell & Company, 208 S. La Salle Street, Chicago, Ill. 60604. SEND PROTESTS TO: Haskell E. Ballard, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Box H-4395 Herring Plaza, Amarillo, Tex. 79101.

No. MC 135152 (Sub-No. 11 TA), filed August 24, 1973. Applicant: CASKET DISTRIBUTORS, INC., Off: R.R. #2, West Harrison, Ind. 45030, and Mlg: P.O. Box 327, Harrison, Ohio 45030. Applicant's representative: Jack B. Josselson, 700 Atlas Bank Building, Cincinnati, Ohio 45202. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Uncrated caskets, casket displays, funeral supplies, and crated caskets*, in mixed loads with uncrated caskets, (1) from Memphis, Tenn., to Greeley, Colo.; Dallas, Tex.; Roanoke, Va.; Sioux Falls, S. Dak.; Providence, R.I.; Detroit, Mich.; Los Angeles, Calif.; Sioux City, Iowa; Chicago, Ill.; Miami, Fla.; New York, N.Y.; and New Orleans, La.; (2) from Ladysmith, Wis., to Oakland, Calif.; and (3) from Muskogee, Okla., to Winston Salem, N.C., for 180 days. SUPPORTING SHIPPERS: Major Casket Co., 1445 Warford, Memphis, Tenn. 28108; Royal Casket Co., Inc., Box 432, Ladysmith, Wis. 54848. 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 135248 (Sub-No. 8 TA), filed August 27, 1973. Applicant: WILLIAM H. DEES, doing business as DEES TRANSPORTATION, P.O. Box 446, Worland, Wyo. 82401. Applicant's representative: Robert S. Stauffer, 3539 Boston Road, Cheyenne, Wyo. 82001. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Waste products*, for recycling or reuse in the furtherance of recognized pollution control programs, and recycled or reuseable products, between points in the United States (except Alaska and Hawaii), located west of the eastern boundaries of Iowa, Minnesota, Illinois, Arkansas, and Louisiana, and (2) *nonalcoholic beverages*, from Denver, Colo., and Salt Lake City, Utah, to points in Arizona, Colorado, Idaho, Kansas, Montana, Nebraska, Nevada, New Mexico, Utah, Washington, and Wyoming, for 180 days. SUPPORTING SHIPPERS: World-Wide Trash Systems, Inc., P.O. Box 127, Shoshoni, Wyo. 82649; Mountain States Canners & Packers, 4401 Monaco, Denver, Colo. 80216; Admiral Beverage Corporation, Box 726, Worland, Wyo. 82401; and Wyo. Coca Cola Bottling Company, P.O. Box 875, Casper, Wyo. 82601. SEND PROTESTS TO: District Supervisor Paul A. Naughton, Interstate Commerce Commission, Bureau of Operations, Rm. 1006 Federal Bldg. & Post Office, 100 East B Street, Casper, Wyo. 82601.

No. MC 135420 (Sub-No. 3 TA), filed August 24, 1973. Applicant: L & H REFRIGERATED EXPRESS, INC., P.O. Box 61, East Omaha Avenue, Norfolk, Nebr. 68701. Applicant's representative: R. D. Huseth, 2313 Fairview Drive, Norfolk, Nebr. 68701. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat byproducts, and meat products, and articles distributed by meat packinghouses* as described in Sections A and C of Appendix I to the report in "Description in Motor Carrier Certificates," 61 M.C.C. 209 and 766, from the plantsite of Madison Foods, Inc., in or near Madison, Nebr., to points in Connecticut, Delaware, Maine, Massachusets, Maryland, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia, for 180 days. SUPPORTING SHIPPER: Armour and Company, Donald A. Chute, Mgr., Transportation & Distribution, Fresh Meats Division, Greyhound Tower, Phoenix, Ariz. 85077. SEND PROTESTS TO: District Supervisor Carroll Russell, Interstate Commerce Commission, Bureau of Operations, 711 Federal Office Bldg., Omaha, Nebr. 68102.

No. MC 135636 (Sub-No. 3 TA), filed August 27, 1973. Applicant: HARRY E. CLARK, Rt. #4, McLeansboro, Ill. 62859. Applicant's representative: Harry E. Clark (same address as above). Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Lumber, pallets, and covers, wooden engine skids, blocking and boxes*, between McLeansboro, Ill., on the one hand, and, on the other, points in Southern Indiana on and south of Indiana Highway 32, Louisville, Ky., and points in Kentucky on and west of U.S. Highway 31E, for 180 days. SUPPORTING SHIPPER: Florence E. Baldwin, Vice President, Joseph G. Baldwin Company, P.O. Box 276, McLeansboro, Ill. 62859. SEND PROTESTS TO: Harold C. Jolliff, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Leland Office Building, 527 East Capitol Avenue, Room 414, Springfield, Ill. 62701.

No. MC 136632 (Sub-No. 3 TA), filed August 27, 1973. Applicant: COPELAND TRANSPORTATION CO., INC., 4159 North Broadway, Wichita, Kans. 67204. Applicant's representative: Clyde N. Christey, 641 Harrison, Topeka, Kans. 66603. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Commodities* dealt in by truck equipment dealers, from Cedar Falls and Grundy Center, Iowa; Montgomery, Ala.; Fort Payne, Melrose Park and Chicago, Ill. Commercial Zone; Meridian, Miss.; Lake Crystal, Minn.; Houston and Cleburne, Tex.; Oklahoma City, Okla.; West Bend, Wis.; and Denver, Colo., to Great Bend, Hays, Beloit and Parsons, Kans. and Springfield, Colo. and also between Topeka, Kansas City, Wichita, Colby, Dodge City, Haven, Great Bend, Hays, Beloit and Parsons, Kans., on the one hand, and Springfield, Colo., on the other hand, for 150 days. SUPPORTING SHIPPERS: O. J. Watson Co., Inc., 4159 N. Broadway, Wichita, Kans. 67204; Scherer Truck Equipment, Inc., 540 South 12th St., Kansas City, Kans.; Capitol Body and Equipment Company, Inc., 2325 North Clay, Topeka, Kans. 66618; O. J. Watson Solid Waste Division, Inc., 4163 N. Broadway, Wichita, Kans. 67204; and Solid Waste Equipment Corporation, 1725 Meriam Lane, Kansas City, Kans. SEND PROTESTS TO: M. E. Taylor, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 502 Petroleum Building, Wichita,, Kans. 67202.

No. MC 136786 (Sub-No. 27 TA), filed August 24, 1973. Applicant: ROBCO TRANSPORTATION, INC., 3033 Excelsior Boulevard, Room 205, Minneapolis, Minn. 55416. Applicant's representative: K. O. Petrick (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meat, meat products, meat byproducts, and articles distributed by meat packinghouses* (except hides and commodities in bulk), from the plantsite and storage facilities utilized by Madison Foods at Madison, Nebr., to points in Indiana, Ohio, Kentucky, Tennessee, Mississippi, Alabama, Florida, Georgia, South Carolina, North Carolina, Virginia, West Virginia, Maryland, Delaware, New Jersey, Pennsylvania, New York, Connecticut, Rhode Island, New Hampshire, Massachusetts, Vermont, Maine, and the District of Columbia, for 180 days. SUPPORTING SHIPPER: Armour and Company, Fresh Meats Division, Greyhound Tower, Phoenix, Ariz. 85077. SEND PROTESTS TO: A. N. Spath, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 448 Federal Building and U.S. Court House, 110 S. 4th Street, Minneapolis, Minn. 55401.

No. MC 138148 (Sub-No. 2 TA), filed August 24, 1973. Applicant: JOSEPH J. SCHMIDT, 7499 Montevideo Court, Jessup, Md. 20794. Applicant's representative: Gordon D. Fronk, 10 E. Baltimore St., Baltimore, Md. 21202. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Beer and malt beverages*, from Fort Wayne, Ind., to Aberdeen, Baltimore, Centreville, Edmondston, Salisbury, and Upper Marlboro, Md., and *empty containers* on return, for 180 days. SUPPORTING SHIPPERS: C. V. Fowler, Jr., Fowler Distributing Company, 314 W. Belair Road, Aberdeen, Md. 21001; Mr. George O. Yewell, Jr., G & G Supply, S. Commerce St., Centreville, Md. 21617;

and Mr. Abraham Genderson, A. Genderson & Sons, Inc., 4612 Ingeraham, Edmondston, Md. 20781. SEND PROTESTS TO: William L. Hughes, District Supervisor, Interstate Commerce Comission, Bureau of Operations, 814–B Federal Building, Baltimore, Md. 21201.

No. MC 138669 (Sub-No. 1 TA), filed August 23, 1973. Applicant: MIDWEST AIR CARGO, INC., 12154 Vivacite, Creve Coeur, Mo. 63141. Applicant's representative: Joseph E. Rebman, Suite 1230, Boatmen's Bank Bldg., St. Louis, Mo. 63102. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except those of unusal value, Class A and B explosives, household goods as defined by the Commission, commodities in bulk, commodities requiring special equipment and those injurious or contaminating to other lading), restricted to those shipments having immediately prior or subsequent movement by air; further restricted to shipments no one individual component of which weighs more than 250 pounds, between St. Louis, Mo., International Airport (Lambert Field), on the one hand, and, on the other, Springfield, Monett, Aurora, Marionville, Verona, and Lebanon, Mo. and their respective commercial zones, for 180 days. Supporting shippers: Santa Fe Air Freight Co., P.O. Box 10068, Lambert Field, St. Louis, Mo.; Air Couriers, Inc., P.O. Box 10233, Lambert Field, St. Louis, Mo., and Bor Air Freight Co., Inc., 156 Weldon Parkway, Maryland Heights, Mo. SEND PROTESTS TO: District Supervisor J. P. Werthmann, Interstate Commerce Commission, Bureau of Operations, Room 1465, 210 N. 12th Street, St. Louis, Mo. 63101.

No. MC 138970 (Sub-No. 1 TA), filed August 24, 1973. Applicant: HAYWARD TRANSPORTATION, INC., Main Street, Fairlee, Vt. 05045. Applicant's representative: Frederick T. O'Sullivan, 622 Lowell Street, Peabody, Mass. 01960. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Sand*, from points in Windham, Windsor, and Orange Counties, Vt., to West Lebanon, N.H.; for 180 days. SUPPORTING SHIPPER: L M Pike & Son, Inc., Box 678, Laconia, N.H. 03246. SEND PROTESTS TO: District Supervisor Paul D. Collins, Interstate Commerce Commission, Bureau of Operations, 52 State Street, Montpelier, Vt. 05602.

No. MC 138988 (Sub-No. 1 TA), filed August 24, 1973. Applicant: WESTERN GENERAL TRUCKING, INC., 1202 First Avenue North, Billings, Mont. Applicant's representative: J. F. Meglen, P.O. Box 1581, Billings, Mont. 59103. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meat and packinghouses products*, fresh or frozen, from ports of entry on the International Boundary line between the United States and Canada at or near Peace Garden and Pembina, N. Dak., and Noyes, Minn., to points in Arizona, California, Nevada, Utah, Oregon, and Washington, for 180 days. SUPPORTING SHIPPERS: A. Christenson Co., Ltd., 40 Dundurn Place, Winnipeg, Manitoba, Canada and Canada Packers Limited, 660 Marion, St. Boniface, Manitoba, Canada and Burns Foods Limited, P.O. Box 70, Winnipeg, Manitoba, Canada. SEND PROTESTS TO: Paul J. Labane, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 222 U.S. Post Office Building, Billings, Mont. 59101.

No. MC 138991 (Sub-No. 1 TA), filed August 28, 1973. Applicant: K. J. TRANSPORTATION, INC., P.O. Box 97164, Rochester, N.Y. 14623. Applicant's representative: S. Michael Richards, 44 North Avenue, Webster, N.Y. 14580. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Malt beverages*, from Columbus, Ohio, to Rochester, N.Y., and returned *empty containers and pallets* in reverse direction, for 180 days. SUPPORTING SHIPPER: Raymong C. Scheible, President, Lake Beverage Corp., 23 Linden Park, Rochester, N.Y. SEND PROTESTS TO: Morris H. Gross, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 104, 301 Erie Blvd., West, Syracuse, N.Y. 13202.

No. MC 139028 TA, filed August 24, 1973. Applicant: KOSCO TRUCKING, INC., 21 Diane Court, Woodcliffe Lake, N.J. 07675. Applicant's representative: George A. Olsen, 69 Tonnele Avenue, Jersey City, N.J. 07306. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Aquariums, materials, equipment, and supplies* used or useful in the sale, purchase, and manufacture of acquariums, between the facilities of Metraframe Corp., at East Paterson and Maywood, N.J., on the one hand, and, on the other, Babylon, Belerose, East Meadow, Elmont, Farmingdale, Hicksville, Massapequa, New Hyde Park, New York City, Plainview, Syosset, and Westbury, N.Y., under contract with Metaframe Corp., Maywood, N.J., for 180 days. SUPPORTING SHIPPER: Metaframe Corporation, 41 Slater Drive, East Paterson, N.J. 07407. SEND PROTESTS TO: District Supervisor Joel Morrows, Interstate Commerce Commission, Bureau of Operations, 9 Clinton Street, Newark, N.J. 07102.

No. MC 139029 TA, filed August 24, 1973. Applicant: SNODGRASS, INC., 923 Second Corso, Nebraska City, Nebr. 68410. Applicant's representative: A. J. Swanson, 521 South 14th St., Box 81849, Lincoln, Nebr. 68501. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Iron and steel and iron and steel articles*, from Nebraska City, Nebr., to Manhattan, Kans., for 180 days. SUPPORTING SHIPPER: Mr. Gregory White, Steel and Pipe Supply Company, 205 Osage Street, Manhattan, Kans. 66502. SEND PROTESTS TO: Max H. Johnston, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 320 Federal Building & Court House, Lincoln, Nebr. 68508.

No. MC 139032 TA, filed August 27, 1973. Applicant: DWIGHT W. BRAGDON, JR., Exeter Road, East Corinth, Maine 04427. Applicant's representative: Peter L. Murray, 30 Exchange Street, Portland, Maine 04111. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Precut log buildings and related construction materials therewith*, from Kenduskeag, Maine, to locations of customers of shipper in New Hampshire, Vermont, Massachusetts, Rhode Island, New York, Pennsylvania, Connecticut, and New Jersey, with no transportation for compensation on return, for 180 days. SUPPORTING SHIPPER: Northeastern Log Homes Inc., Kenduskeag, Maine 04450. SEND PROTESTS TO: Donald G. Weiler, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Rm. 307, 76 Pearl Street, P.O. Box 167, PSS, Portland, Maine 04112.

By the Commission.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.73–19501 Filed 9–12–73;8:45 am]

[Rev. S.O. 944; I.C.C. Order 76, Amdt. 3]

READING CO.

Rerouting or Diversion of Traffic

Upon further consideration of I.C.C. Order No. 76 (Reading Company, Richardson Dilworth and Andrew L. Lewis, Jr., Trustees) and good cause appearing therefor:

It is ordered, That:

I.C.C. Order No. 76 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., November 15, 1973, unless otherwise modified, changed, or suspended.

It is further ordered, That this amendment shall become effective at 11:59 p.m., August 31, 1973, and that this amendment shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association; and that it be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., August 23, 1973.

INTERSTATE COMMERCE COMMISSION,
[SEAL] R. D. PFAHLER,
Agent.

[FR Doc.73–19500 Filed 9–12–73;8:45 am]

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THURSDAY, SEPTEMBER 13, 1973
WASHINGTON, D.C.

Volume 38 ■ Number 177

PART II

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

■

MILK IN THE MINNESOTA–NORTH DAKOTA AND CERTAIN OTHER MARKETING AREAS

Revised Recommended Decision; Opportunity to File Exceptions

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Parts 1060, 1061, 1063, 1064, 1065, 1068, 1069, 1070, 1076, 1078, 1079]

[Docket No. AO-360-A6, etc.]

MILK IN THE MINNESOTA-NORTH DAKOTA AND CERTAIN OTHER MARKETING AREAS

Notice of Revised Recommended Decision and Opportunity To File Written Exceptions on Proposed Amendments to Tentative Marketing Agreements and to Orders

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7 CFR part	Marketing area	Docket No.
1060	Minnesota-North Dakota	AO-360-A6.
1061	Southeastern Minnesota-Northern Iowa.	AO-367-A5.
1063	Quad Cities-Dubuque	AO-105-A35.
1064	Greater Kansas City	AO-23-A42.
1065	Nebraska-Western Iowa	AO-86-A25.
1068	Minneapolis-St. Paul, Minn	AO-178-A28.
1069	Duluth-Superior	AO-133-A19.
1070	Cedar Rapids-Iowa City	AO-229-A26.
1076	Eastern South Dakota	AO-200-A17.
1078	North Central Iowa	AO-272-A20.
1079	Des Moines, Iowa	AO-295-A24.

Notice is hereby given of the filing with the Hearing Clerk of this revised recommended decision with respect to proposed amendments to the tentative marketing agreements and orders regulating the handling of milk in the aforesaid marketing areas.

Interested parties may file written exceptions to this decision with the Hearing Clerk, U.S. Department of Agriculture, Washington, D.C. 20250, by October 15, 1973. Seventeen copies of the exceptions should be filed. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The above notice of filing of the decision and of opportunity to file exceptions thereto is issued 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).

PRELIMINARY STATEMENT

The hearing on the record of which the proposed amendments, as hereinafter set forth, to the tentative marketing agreements and to the orders as amended were formulated was conducted at Atlanta, Ga., on October 18-20, 1971, at Dallas, Tex., on November 9 and 10, 1971, and at Bloomington, Minn., on November 16-18, 1971, pursuant to notice thereof which was issued October 4, 1971 (36 F.R. 19604).

This hearing was a single proceeding on proposed amendments to the tentative marketing agreements and orders regulating the handling of milk in 33 marketing areas. In addition to those listed at the beginning of this document, such marketing areas include the following:

GROUP I

Georgia	Northern Louisiana
Neosho Valley	Memphis, Tenn.
Wichita, Kans.	Nashville, Tenn.
Chattanooga, Tenn.	Fort Smith, Ark.
New Orleans, La.	Central Arkansas

GROUP II

Red River Valley	Central West Texas
Oklahoma Metropolitan	Austin-Waco, Tex.
	Corpus Christi, Tex.
Lubbock-Plainview, Tex.	Central Arizona
	Texas Panhandle
North Texas	Rio Grande Valley
San Antonio, Tex.	

The hearing notice also included the Mississippi order (Part 1103), which was later included in the recommended decision with the "Group I" orders. The Mississippi order was terminated at midnight, April 30, 1973 (38 FR 8748), at which time it ceased to be a part of this proceeding.

Upon the basis of the evidence introduced at the hearing and the record thereof, the Deputy Administrator, Regulatory Programs, on August 28, 1972, filed with the Hearing Clerk, United States Department of Agriculture, his recommended decision containing notice of the opportunity to file written exceptions thereto.

Because of its length, and to faciliitate its distribution to interested parties, the recommended decision was published in the FEDERAL REGISTER in the form of three separate documents. Each document contained the proposed amendments for the group of 11 orders listed at the beginning of such document and, for the convenience of interested parties, an identical set of findings and conclusions. These documents were published on the following dates: Group I orders—September 16, 1972 (37 FR 18984); Group II orders—September 19, 1972 (37 FR 19210); and Group III orders—September 20, 1972 (37 FR 19482).

On the basis of exceptions to the recommended decision, a number of changes in the findings and conclusions of that decision concerning the classification and pricing of milk in certain uses are appropriate. Because such changes are substantive, a revised recommended decision is being issued with an opportunity to submit exceptions thereto.

The publication procedure used for the August 28, 1972, recommended decision is again being used in the case of this revised recommended decision. The three documents constitute, however, a single revised recommended decision under this proceeding.

The material issues, findings and conclusions, rulings, and general findings of the August 28, 1972, recommended decision are set forth in full herein, subject to the following modifications. The modifications noted do not include those where the reference to "33" orders or markets was changed to "32" orders or markets because of the termination of the Mississippi order.

1. Under the heading "*General setting of the hearing.*", paragraphs 1, 3, and 6 are changed.

2. Under the heading "1. *Application of a uniform milk classification plan in the 33 markets.*", paragraphs 1 and 9 are changed, and a new paragraph is added after the last paragraph.

3. Under the heading "2. *Revision of the present Class I classification.*", paragraphs 8, 9, 11, and 14 are changed, and the 28th paragraph is deleted and three new paragraphs are substituted therefor.

4. Under the heading "3. *Classification and pricing of milk not needed for Class I use.*", the entire discussion is changed.

5. Under the subheading "(a) *Other source milk definition.*", a new paragraph is added immediately after paragraph 7, and paragraph 8 is changed.

6. Under the subheading "(b) *Accounting for nonfat milk solids added to milk and milk products.*", the last paragraph is changed.

6a. Under the subheading "(c) *Classification of milk transferred or diverted to other plants.*", paragraph 12 is changed.

7. Under the subheading "(d) *Classification of end-of-month inventory.*", paragraphs 3 and 12 are changed.

8. Under the subheading "(e) *Classification of shrinkage, milk dumped and milk disposed of for animal feed.*", paragraphs 3-5, 8, 9, 15 and 19 are changed.

9. Under the subheading "(f) *Allocation of receipts to utilization.*", paragraph 7 is deleted, and paragraphs 9, 17, and 19 are changed.

10. Under the heading "5. *Changing the butterfat differentials.*", paragraphs 3-5, 8, 9, 12, 15, 16 and 18 are changed.

11. Under the heading "6. *Advance announcement of prices for surplus milk.*", paragraphs 3 and 4 are changed.

12. Under the heading "7. *Treatment of filled milk under the Minneapolis-St. Paul and Southeastern Minnesota-Northern Iowa orders.*", paragraph 11 is deleted.

The material issues on the record of the hearing relate to:

1. Application of a uniform milk classification plan in the 32 markets;

2. Revision of the present Class I classification;

3. Classification and pricing of milk not needed for Class I use;

4. Miscellaneous classification and accounting changes:

(a) Other source milk definition;

(b) Accounting for nonfat milk solids added to milk and milk products;

(c) Classification of milk transferred or diverted to other plants;

(d) Classification of end-of-month inventory;

(e) Classification of shrinkage, milk dumped and milk disposed of for animal feed;

(f) Allocation of receipts to utilization;

(g) Obligations relative to other source milk; and

(h) Reports;

5. Changing the butterfat differentials;

6. Advance announcement of prices for surplus milk;

7. Treatment of filled milk under the Minneapolis-St. Paul and Southeastern Minnesota-Northern Iowa orders; and

8. A uniform "equivalent price" provision.

General setting of the hearing. This hearing is the second of two regional hearings on the proposed use of a uniform plan for classifying milk for pricing purposes under Federal milk orders. The first hearing, which was held at Clayton, Mo., on July 14–22, 1970, was for seven Midwestern markets. A recommended decision based on the seven-market hearing was issued on June 4, 1971, and exceptions have been filed. A revised recommended decision for the seven markets is being issued concurrently with this revised recommended decision.

Prior to the first hearing, the National Milk Producers Federation, an organization of cooperative associations of dairy farmers and federations of such cooperative associations, undertook the development of a uniform milk classification plan for use under milk orders. Guidelines were formulated for use by member organizations in the drafting of specific classification proposals for consideration at public hearings.

Using these guidelines as a basis for their proposals, several cooperative associations petitioned the Department for a hearing on proposals relating to the classification and pricing of milk in seven Midwestern markets. After the hearing and issuance of a recommended decision, these cooperatives, along with other producer groups, requested a similar hearing for an additional 33 markets. The order for one of these markets (Mississippi) has since been terminated, and further reference to this group of markets will be in terms of the remaining 32 markets. The two hearings together involve a group of 39 markets located throughout the central part of the United States.

As in the case of the seven markets, the main thrust of the cooperatives' proposals for the 32 markets was the proposed use of an identical classification plan under each of the orders. As proposed, the new plan would have three classes of utilization rather than the two classes now provided in most of these orders. The present Class II classification would be redesignated as Class III and a new Class II classification, which would include various milk products now in Class I and Class II, would be established.

Corollary pricing proposals by the cooperatives would provide that the new Class II price under all but the Central Arizona order be the Minnesota-Wisconsin price plus an amount ranging from 10 to 20 cents, depending on the order involved. Prices would increase generally from north to south. For the Central Arizona order, which now has three classes, local producers proposed retention of the Class II price now in effect (a butter-nonfat dry milk formula price plus 25 cents).

Producers took diverse positions concerning the appropriate Class III price for the 32 markets. A number of cooperatives operating largely in the Upper Midwest proposed that the Class III price for markets in that area be based on a formula reflecting market prices for butter, nonfat dry milk and cheddar cheese. A regional cooperative operating in the Southeastern United States proposed that the Class III price in four of its local markets be based on the Minnesota-Wisconsin price, with reductions of 5 to 15 cents to be applicable in three of the markets. Another regional cooperative proposed for 15 southwestern markets that the Class III price under each order for the principal surplus products be the lower of the present surplus price now in effect or the Minnesota-Wisconsin price. In the case of still three other markets, local producer groups asked that their present surplus prices (all based solely or in part on butter-nonfat dry milk formulas) be retained.

Cooperatives also proposed that a single butterfat differential apply to all prices under each order. This differential, which would be identical among the 32 orders, would be based on the Chicago butter price times a factor of 0.115.

A uniform classification plan for the 32 orders was advocated also by the Milk Industry Foundation and the International Association of Ice Cream Manufacturers, national trade associations of fluid milk and ice cream processors whose members operate in each of the 32 subject markets. Without taking a position on whether there should be two or three use classes, these groups offered alternative proposals on the classification of various milk products under either type of classification plan. Individual handlers also made proposals concerning specific aspects of the classification and pricing scheme.

A more detailed description of the proposals by producers and handlers is set forth in the discussion of the material issues.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. *Application of a uniform milk classification plan in the 32 markets.* Each of the 32 orders under consideration should provide for the same basic classification plan. As adopted herein, each order would provide for three classes of utilization, with the milk uses included in each class being the same for each order. Likewise, the same basic procedure would be used under each order for classifying milk transferred or diverted from pool plants to other plants, and for allocating a handler's receipts to his utilization to determine the classification of his producer milk. Each order would use the same Class II price formula. For Class III milk, two price formulas would be used, with one applying under 18 orders and the other under 14 orders. All differential butterfat received from producers would be priced at the same level regardless of use.

The statutory authority for Federal milk orders specifies that an order shall classify milk purchased by handlers from producers or associations of producers in accordance with the form in which or the purpose for which the milk is used. When each of the 32 subject orders was promulgated, the classification plan adopted reflected the marketing conditions and practices prevailing at the time in the local area concerned. Because local conditions and practices were seldom alike from market to market, the classification plans often varied from one order to another. As long as the markets remained relatively isolated from each other, marketing problems resulting from the differences in the various classification plans were minimal.

In recent years the "local" character of these markets has been disappearing. Intermarket movements of milk have become commonplace as handlers and producers alike seek to find additional outlets for milk. Such milk movements have been encouraged or facilitated by such developments as inspection reciprocity between health jurisdictions, improved highway networks and transportation equipment, conversion from can handling to farm bulk tanks, emergence of regional cooperatives, new processing and packaging techniques, and concentration of processing and packaging operations in large, specialized facilities.

Numerous cases were cited by handlers of products being distributed throughout multi-State regions from centralized processing facilities. Products frequently mentioned include frozen desserts, yogurt, various cream products and cottage cheese. Widespread distribution patterns prevail particularly for the processors of specialty products such as yogurt and sterilized cream items. Although the volume of these specialty products is relatively limited, it is probably the distribution of these products more than any others that has precipitated such general interest within the industry for uniform classification provisions among Federal orders.

Although the 32 orders have been revised from time to time to reflect the closer intermarket relationships, the classification plans of these orders continue to differ. The differences relate not only to the products included in each respective class, but also to the attendant class prices and butterfat differentials, the rules for classifying milk moved from one plant to another, the procedure for allocating a handler's receipts to his utilization, the method of classifying end-of-month inventories, and the manner of classifying shrinkage.

Such differences in the classification and pricing of milk are often disruptive to the competitive relationships of handlers and to the marketing of producer milk. Many of these differences, though, have little, if any, foundation under today's marketing conditions. It is thus concluded that a generally uniform classification and pricing plan should be incorporated in each of the 32 orders under consideration.

In conjunction with the development of uniform provisions pertaining to the classification and pricing of milk, it is desirable to also develop a single format of order provisions for use in each of these orders. All orders contain essentially the same categories of provisions, such as those relating to the definition of a pool plant or other source milk,

those setting forth the class price formulas, or those describing how the uniform price shall be computed. At present, however, many of the orders are structured in such a way that provisions serving essentially the same purpose under all orders do not appear in each order in the same place or under the same section title.

Coordination of the orders in this respect will be helpful to those in the industry who must work with several orders, a situation that is becoming increasingly common as individual cooperatives and handlers continue to expand their marketing activities into more and more regulated markets. Moreover, the opportunity to effect changes in a relatively large number of orders at the same time makes the adoption of a uniform order format a particularly desirable step at this juncture of the order program.

Each of the orders included in this document is set forth in its entirety at the end of the document. Each order reflects the revised order format as well as the classification and pricing amendments adopted herein. In adapting each order to the new format, no substantitive changes have been made in those provisions not under consideration at the hearing. Since the classification and pricing amendments may be less discernable to the reader with the reprinting of the complete order, the sections in each order that encompass the basic changes in classification and pricing are listed below:

Sections 12–16, 30, 40–44, 50, 52–54, 60, 62, 74–76, and 85.

Some of the amendments adopted herein would change certain procedures under the orders that are carried out after the end of the month to which they apply. These include the submission of reports, the classification of milk, and the computation and announcement of certain class prices, butterfat differentials, and producer prices. It is intended, however, that the amendments apply only to that milk handled after the effective date of the changes. Such amendments are not intended to affect the completion of previously existing procedures with respect to milk handled prior to the effectuation of the amendments.

2. *Revision of the present Class I classification.* With certain exceptions noted below, Class I milk under each of the 32 subject orders should include all skim milk and butterfat disposed of in the form of milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids. Skim milk and butterfat disposed of in any such product that is flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted likewise should be classified as Class I milk. Such classification should apply whether the products are disposed of in fluid or frozen form.

In addition, Class I milk should include all skim milk and butterfat disposed of in the form of any other fluid or frozen milk product (if not specifically designated as a Class II or Class III use) that contains by weight at least 80 percent water and 6.5 percent nonfat milk solids, and less than 9 percent butterfat and 20 percent total solids.

Skim milk disposed of in any product described above that is modified by the addition of nonfat milk solids should be Class I milk only to the extent of the weight of the skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

Class I milk should not include skim milk or butterfat disposed of in the form of evaporated or condensed milk (plain or sweetened), evaporated or condensed skim milk (plain or sweetened), formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, any product that contains by weight less than 6.5 percent nonfat milk solids, or whey.

As a convenience in drafting order provisions, each product designated herein as a Class I product would be defined in the 32 orders as a "fluid milk product." [1]

Class I milk should include also any skim milk and butterfat not specifically accounted for in Class II or Class III, other than shrinkage permitted a Class III classification.

Except for sterilized products, most of the products listed above for inclusion in Class I are now included in the Class I classification under each of the 32 orders. Only in the case of milkshake mixes might there be a higher classification under the adopted amendments than at present. Under some orders, such mixes are now included in the lowest class. This higher classification would be limited, however, to only those milkshake mixes containing less than 20 percent total solids.

The adopted Class I classification would not include eggnog, yogurt, cream, or mixtures of cream and milk, or skim milk containing 9 percent or more butterfat (such as half-and-half). A Class I classification now applies to eggnog in 9 of the 32 markets, and to yogurt in 18 of the markets. In all markets, sweet cream (except that in frozen, concentrated, aerated, or sterilized form) and half-and-half are now Class I products. The classification of sour cream and sour cream mixtures, on the other hand, varies considerably among the orders.

Six of the 32 orders now include ending inventories of packaged fluid milk products in Class I. As discussed later, such inventories would not be classified as Class I milk under the revised orders.

The proposals concerning the Class I classification of milk related primarily to the use under all orders of a uniform fluid milk product definition based on product composition, and to the appropriate classification of milkshake and ice milk mixes, sterilized fluid milk products, cream, eggnog, yogurt, fluid milk products, to which nonfat milk solids have been added and ending inventory. The classification of cream, eggnog, and yogurt, is discussed under Issue 3 which deals with the classification and pricing of milk not needed for Class I use. The method of accounting for nonfat milk solids added to fluid milk products is discussed under Issue 4(b). The classification of ending inventory is dealt with under Issue 4(d). The remaining Class I issues are dealt with at this point.

Milkshake and ice milk mixes containing less than 20 percent total solids should be included in Class I. Such mixes containing a greater percentage of solids should be Class II products.

Cooperatives proposed that milkshake mixes that "are not further processed in a commercial establishment" be in Class I. They proposed that all other milkshake mixes be in Class II. The national organizations of fluid milk and ice cream processors, on the other hand, asked that all milkshake mixes be included in the lowest classification.

Milkshake and ice milk mixes are being marketed generally through two channels. Limited quantities of such mixes are processed for home consumption, with such mixes being distributed to consumers through foodstores and on home delivery routes. The major outlet for milkshake and ice milk mixes, though, is the so-called "soft-serve" trade. Mixes processed by regulated handlers for this use are sold to commercial establishments where the product is run through a special freezer and dispensed to the public in a semisoft form.

Milkshake and ice milk mixes are basically similar in composition and purpose to what might be considered as traditional frozen desserts, such as ice cream. Although such shake mixes are intended to be consumed in a semisoft form, or even in a very thick fluid form, they are being marketed for essentially the same use as the traditional frozen desserts. This is the case whether such mixes are sold through the "soft-serve" trade or for home use. With minor exception, as noted below, milk used in milkshake and ice milk mixes thus should be classified in the same class as milk used in the traditional frozen desserts. As discussed later in this decision, the classification plan adopted herein includes frozen desserts in Class II.

It is possible that a product very similar in composition and form to chocolate milk could be marketed under the label of a milkshake mix for the purpose of having a lower classification apply to the product. Since such a product actually would have the same general form and purpose as other fluid milk products now classified as Class I under these orders, it should be included in the Class I classification. It is necessary, though, to provide some means of distinguishing between such a product and the general category of milkshake mixes that are

[1] The reader should keep in mind that the orders do not classify products per se but rather the skim milk and butterfat disposed of in the form of a particular product or used to produce a particular product. To simplify the presentation of the findings and conclusions, however, reference is made in this decision to Class I products, Class II products, and Class III products, or to certain products included in a particular class.

being sold in competition with frozen desserts. For this purpose, the total solids content of the product should be used. A standard of 20 percent or more total solids should encompass those milkshake and ice milk mixes intended for use as a type of frozen dessert. Mixes with less solids are similar in composition to chocolate milk and other flavored fluid milk products and should be a Class I product.

As proposed by cooperatives and the national organizations of fluid milk and ice cream processors, no exception to the Class I classification of milk should be made for fluid milk products in sterilized form. The sterilization of fluid milk products does not change the form or purpose of such products. As in the case of the unsterilized fluid milk products which they resemble, such sterilized products are disposed of in fluid form for consumption as a beverage. They are generally intended for use in place of their unsterilized counterparts and are thus competing for the same consumers.

Returns to producers for milk disposed of in the form of fluid milk products should be the same whether such products are sterilized or unsterilized. Such products in either form are being marketed for the same beverage use. Classifying all such products in Class I will assure that the returns from producer milk used in sterilized fluid milk products will contribute on the same basis as returns from producer milk used in unsterilized fluid milk products toward inducing an adequate supply of milk for beverage use.

With the removal of any exception to the Class I classification of milk because of sterilization, specific reference must be made in the "fluid milk product" definition to the exclusion of certain products that otherwise could be construed to fall within such definition. Such products are evaporated or condensed milk or skim milk, formulas in hermetically sealed glass or all-metal containers that are especially prepared for infant feeding or dietary use, and products (such as flavored drinks in "pop" bottles) containing by weight less than 6.5 percent nonfat milk solids. These products, which are being sold in sterilized form, are now excluded from the Class I classification and, as proposed by cooperatives and handlers, such exclusion should be continued, notwithstanding the fact that they are sold to the public in fluid form. Evaporated milk and condensed milk sold for home use are intended primarily for cooking purposes. They are not consumed normally as a beverage. Infant and dietary formulas, which are being sold in hermetically sealed glass or all-metal containers, are specialized food products prepared for a limited use. Such formulas do not compete with other milk beverages consumed by the general public. Similarly, fluid products containing only a minimal amount of nonfat milk solids are not considered as being in the competitive sphere of the traditional milk beverages.

Fluid milk products should not be defined only on the basis of product composition, as was proposed by cooperatives. Contending that the present fluid milk product definition in each order does not clearly identify those products that are intended to be classified as Class I products, cooperatives proposed that a fluid milk product be defined solely in terms of moisture and milk solids content of the product. As proposed by producers, a "fluid milk product" would be any product containing at least 6.5 percent but less than 27 percent nonfat milk solids, less than 9 percent butterfat, and more than 20 percent moisture, all computed on the basis of weight.

In support of their proposal, proponents indicated that such a definition would result in a more uniform application among the 32 orders of the classification provisions. They contended that the listing of products under the current definitions does not accommodate the proper classification of new products or variations of the listed products when they are introduced on the market. Proponents pointed out that as market administrators have had to make order interpretations in response to this situation variations in interpretation and classification have resulted among the markets. Adoption of the proposed definition, it was contended, would eliminate such problems. Any product meeting the specified composition limits for a fluid milk product would be a fluid milk product regardless of the name under which the product might be marketed.

Proponents recognized, however, that their proposed fluid milk product definition would include some products not intended by them to be in Class I, and, at the same time, would exclude certain products that they wanted in this classification. To overcome this problem, proponents stated that certain products should be listed by name, either as inclusions or exclusions, to assure that the fluid milk product definition would include those products, and only those products, warranting a Class I classification.

Handlers took the position that the fluid milk product definition should continue to list by name those products intended to be included in Class I. They believe that this procedure would result in less confusion within the industry concerning the application of this definition. Also, handlers were concerned that defining a fluid milk product on the basis of product composition would deter the development and marketing of new products. They contended that the proposed composition standards could embrace a new product that was intended by the processor to be marketed in direct competition with products that would be included in Class II or Class III rather than in competition with Class I products.

The primary concern with any fluid milk product definition is that it clearly define the products or types of products that are intended to be included in the definition. The fluid milk product definition adopted herein, which incorporates both the listing of specified products and the use of composition percentages, should meet this requirement. Incorporation of this definition in each of the 32 orders will provide a uniform basis for identifying those products that are to be defined as "fluid milk products."

For simplicity, the fluid milk product definition should continue to list the generic names of those products commonly sold for consumption as beverages. The products listed in the adopted definition encompass most of the forms in which milk for fluid uses is sold. Anyone referring to this fluid milk product definition may easily ascertain in the case of most milk products whethe. or not a particular product is included in the definition.

A listing of products alone in the fluid milk product definition may not clearly indicate the classification of new milk products developed for fluid consumption. With certain limited exceptions noted, the fluid milk product definition is intended to include all milk products that are distributed for use as beverages. Although a new milk beverage introduced on the market might not be encompassed within the list of named products, it should be treated as a fluid milk product, nevertheless, if its composition is similar to that of the listed products. This will be the result of the standards of product composition for fluid milk products herein adopted.

As indicated, the adopted composition standards would embrace any fluid or frozen milk product not specified as a Class II or Class III product that contains by weight at least 80 percent water and 6.5 percent nonfat milk solids, and less than 9 percent butterfat and 20 percent total solids. The 9 percent butterfat standard coincides with the butterfat percentage adopted herein to delineate the mixtures of cream and milk or skim milk to be included in Class II. The total solids and water percentages represent a reasonable measure of the fluidity of those products that normally are consumed as beverages. The 6.5 percent nonfat milk solids standard is used to exclude from the fluid milk product definition those products which contain some milk solids but which are not closely identified with the dairy industry, such as chocolate flavored drinks in "pop" bottles.

These composition standards are chosen so as to conform as closely as possible to the water, solids, and butterfat content of those products specifically listed in the fluid milk product definition, i.e., the traditional milk beverages. It is intended that these standards apply only to milk products, and only to such products that are being marketed for consumption in fluid form. Such standards would not be applied to products such as soups, which are not customarily thought of as milk products, or to products that would be a type of frozen dessert marketed for consumption in frozen form.

In determining whether or not a milk product in fluid form falls within the composition standards of the fluid milk product definition, such standards should be applied to the composition of the product in its finished form, not to the composition of the product on a skim equivalent basis. A new product not intended for beverage use might contain in its finished form somewhat more than the maximum total solids specified for a

fluid milk product under the adopted composition standards. On this basis, the product would not fall within the fluid milk product definition. Application of the composition standards to this product on a skim equivalent basis, however, could result in the product meeting such standards and thus being defined as a fluid milk product.

As pointed out by producers in their exceptions, applying the composition standards to products in the form in which marketed could exclude from the fluid milk product definition a new concentrated fluid product that is intended to be consumed as a beverage only after reconstitution. For the present time, however, the composition standards should be applied to a product in its finished form. A refinement of such standards may be appropriate once there has been an opportunity to evaluate their applicability under actual market conditions.

It should be noted that under the adopted classification provisions accounting for a new product on other than a skim equivalent basis would be limited solely to determining whether or not the product meets the composition standards of the fluid milk product definition. For all other purposes under the order, the product would be accounted for on a skim equivalent basis.

In applying the 6.5-percent nonfat milk solids standard, it is intended that this standard apply to such solids in any form except sodium caseinate. As set forth in the "filled milk" decision applicable to most of the 32 orders, sodium caseinate in any product is treated under the orders as a nonmilk ingredient.[2] There is no basis for changing this procedure.

The use of composition standards as a means of defining fluid milk products should not deter the development of new milk products, as handlers contended. Should the Class I classification of a new product appear to be incongruous with the intended use of the product, the hearing process remains as an avenue through which a different classification may be considered. The use of composition standards should result, however, in a more uniform classification among orders of new products developed for fluid consumption.

3. *Classification and pricing of milk not needed for Class I use.* Two use classes, Class II and Class III, should be provided in each of the 32 orders for skim milk and butterfat utilized for other than Class I purposes. The Class II price should be the basic formula price (Minnesota-Wisconsin manufacturing milk price) for the month plus 10 cents. The price under each of the orders for Class III milk should be the basic formula price for the month, but in certain markets not to exceed a butter-nonfat dry milk formula price.

Class II milk should include skim milk and butterfat disposed of in the form of eggnog, yogurt or a "fluid cream product", i.e., cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients. Any product containing 6 percent or more nonmilk fat (or oil) that resembles any of these products likewise should be in this class. Also, eggnog, yogurt and fluid cream products that are in inventory at the end of the month in packaged form should be in Class II.

Included also in this classification should be skim milk and butterfat used to produce cottage cheese, lowfat cottage cheese, dry curd cottage cheese, milkshake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts, frozen dessert mixes, any concentrated milk product in bulk fluid form, plastic cream, frozen cream, anhydrous milkfat, custards, puddings, pancake mixes, and formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers.

A Class II classification should apply also to bulk fluid milk products and bulk fluid cream products disposed of to any commercial food processing establishment (other than a milk or filled milk plant) at which food products (other than milk products and filled milk) are processed and from which there is no disposition of fluid milk products or fluid cream products other than those received in consumer-type packages.

Class III milk should include skim milk and butterfat used to produce cheese (other than cottage cheese, low fat cottage cheese and dry curd cottage cheese), butter, any milk product in dry form, evaporated or condensed milk (plain or sweetened) in a consumer-type package, evaporated or condensed skim milk (plain or sweetened) in a consumer-type package, and any product not otherwise specified as a Class I, Class II or Class III product.

Other Class III uses should include bulk and packaged fluid milk products and bulk fluid cream products in inventory at the end of the month, and that portion of modified (by the addition of nonfat milk solids) fluid milk products not included in Class I. Class III should include any fluid milk product or Class II product accounted for on a "disposed of" basis that is used for animal feed, or is dumped if the market administrator is notified of such dumping in advance and is given the opportunity to verify such disposition. Also, shrinkage within certain limits should be classified as Class III milk.

As described later, the classification and pricing adopted herein for milk not needed for Class I use differs in some respects from that set forth in the August 28, 1972, recommended decision.

The present classification of milk used in the adopted Class II and Class III classifications is quite varied among the 32 orders. Seven of the orders provide for three use classes while 25 have two classes of utilization. Under four of the three-class orders cottage cheese is classified separately from all other uses. One order classifies cottage cheese and sales of milk to commercial food establishments in an intermediate class. Two orders have a separate use class for milk used in cheddar cheese. Substantial variation exists among the 32 orders in the classification of skim milk and butterfat in eggnog, yogurt, sour cream, milkshake mixes, and milk disposed of to commercial food establishments. The treatment of milk dumped, and milk in inventory at the end of the month, also differs under the several orders.

There is now a variety of price formulas under the 32 orders for milk in other than Class I uses. Seventeen orders use the Minnesota-Wisconsin manufacturing milk price. Three orders use a combination of the Minnesota-Wisconsin price and a butter-nonfat dry milk formula price. Four orders use a combination of a butter-nonfat dry milk formula price and a cheddar cheese formula price. Six orders use a butter-nonfat dry milk formula price, with four of these employing a seasonal adjustment. Two orders use the U.S. manufacturing milk price with a seasonal adjustment for milk used to produce butter, nonfat dry milk and cheddar cheese. This variety of price formulas can result in as many as 11 different prices for milk put to similar uses. Also, four additional prices can result under the five orders that have an intermediate classification and price for milk used to produce cottage cheese.

Cooperatives proposed that each of the 32 orders provide for an intermediate classification (Class II) for skim milk and butterfat disposed of as cream, now a Class I use, and that used to produce several other products now in the lowest priced class under most of the orders. The proposed Class II uses would include cottage cheese, frozen desserts, milkshake mixes for further processing in commercial establishments, eggnog, yogurt, evaporated or condensed milk or skim milk, dietary and infant formulas, custards, puddings, pancake mixes, any product with 6 percent or more nonmilk fat (or oil), and fluid milk products disposed of to commercial food processors. In addition, their new Class II also would include cream, mixtures of cream and milk or skim milk containing 9 percent or more butterfat, cream in plastic, frozen, aerated or sterilized form, sour cream, sour mixtures and anhydrous milkfat.

Under the cooperatives' proposal, the Class I price in 31 markets would be the Minnesota-Wisconsin price plus 10 to 20 cents (increasing generally from north to south). Eleven markets in the States of Minnesota, Iowa, North Dakota, South Dakota, and Tennessee would have a price differential of plus 10 cents. The remainder of the 31 markets would have plus 15 cents, except for a plus 20 cents in the Corpus Christi and Rio Grande Valley markets. A cooperative in the Central Arizona market proposed that the present Class II price, which is 25 cents over the Class III price, be retained in that market.

[2] Official notice is taken of the Assistant Secretary's decision issued on Oct. 13, 1969 (34 F.R. 16881), with respect to the Memphis, Tenn., and certain other marketing areas.

The Class III uses proposed by the cooperatives would include dried products, cheese (except cottage cheese), butter, condensed whey and buttermilk for animal feed, dumpage, ending inventory, shrinkage, and the non-Class I portion of modified fluid milk products.

The cooperatives' Class III pricing proposals varied by regions. A number of cooperatives operating primarily in the Upper Midwest proposed the adoption of a weighted butter-nonfat dry milk (55 percent) and cheese (45 percent) formula using "the product yield factors and make allowances used by the Department in its CCC Price Support Program." While suggesting that such a pricing formula would be appropriate for all 32 markets, they particularly urged its adoption for 11 upper midwestern markets. For four southern markets, the principal cooperative in such markets proposed the use of the Minnesota-Wisconsin price, but with minus adjustments of 5 cents for Chattanooga, 10 cents for New Orleans, and 15 cents for Georgia. For 15 markets in the Southwest, the principal cooperative there proposed that the Class III price be the higher of the Minnesota-Wisconsin price or the current price for the lowest utilization in the respective order. Under its proposal, milk used in butter, nonfat dry milk, and cheddar cheese would be priced, however, at the lower of the Minnesota-Wisconsin price or the current price for the lowest utilization in the respective order. The principal cooperative in the Central Arizona market proposed retention of the Class III price now applicable in that market which is based on a butter-nonfat dry milk formula.

In support of their proposed Class II and Class III use categories, the several cooperatives contended that there are significant differences in the competitive position of, and demand for, milk so used. They stated that handlers demand quality milk on a regular basis for the proposed Class II products, and that in the various markets alternative supplies of milk for such uses generally cannot be obtained for less than the Class II prices they propose for producer milk. Moreover, they claimed that products in such Class II uses should bear, along with fluid milk products, part of the cost necessary to attract an adequate market supply. With respect to the Class III classification, proponents stated that their proposed Class III products are the residual uses of milk associated with fluid markets. Consequently, the local production of such products is related to the amount of reserve or excess milk in the market. Such products, they claimed, can be stored for long periods and do not need to be made on a regular basis.

Proponent cooperatives pointed out that the present Class I classification of cream and cream mixtures has placed these products in a poor competitive position in the marketplace relative to nondairy substitutes. By shifting these products to a lower-priced class, proponents hope the industry will be better able to maintain its present small share of the cream and dessert topping market and perhaps recapture some of the market that it has lost.

In support of their various Class III pricing proposals, the cooperatives urged basically that such prices reflect the net value that can be obtained by cooperatives handling reserve supplies. They claimed that such value should take into consideration (1) product values of butter, nonfat dry milk, and cheese; (2) the cost of moving milk to available outlets; and (3) the burden of "balancing" the fluid milk supply in each market.

With respect to certain southern markets, it was contended that the net value that can be obtained for reserve milk supplies tends to differ from market to market depending upon surplus disposal conditions that prevail in each market. The principal variable factor mentioned was the cost incurred in transporting reserve supplies to available processing plants. For example, there are no plants processing hard cheese, butter, or nonfat dry milk, in Georgia. Consequently, the principal cooperative in the area transports much of the reserve milk supply associated with the Georgia market to manufacturing plants located in Tennessee. The amounts so transported have ranged from 1 to 11 million pounds per month. The cooperative stated that for the 12 months ending with August 1971 it netted an average of 37.6 cents per hundredweight less than the Georgia order Class II price on such shipments because of the cost of hauling the milk.

Extra transportation costs are incurred also by the cooperative with respect to its disposition of reserve milk supplies in the New Orleans market. In the Nashville market, on the other hand, the same cooperative realized an average of 9.7 cents over the Nashville Class II price for the milk it moved to nonpool plants for manufacturing use during the 12 months ending with August 1971. For the Chattanooga market, the cooperative realized slightly less than the Class II price for milk moved to nonpool plants.

Another condition which the cooperative contended has influenced the returns it is able to realize on reserve milk supplies is that the quantity of such milk to be processed varies both seasonally and on certain days of the week. During the month of September, the reserve milk supply handled by the cooperative is at its lowest level. In September 1970, for example, the cooperative processed less than 500,000 pounds of milk at each of its major butter-nonfat dry milk processing plants (Lewisburg, Tenn., and Franklinton, La.). The following April, it processed 23.9 and 5.8 million pounds of milk, respectively, at such plants.

Reserve milk supplies increase on Sundays compared to other days because bottling plants in the markets served by the cooperative usually process milk only five or, at the most, 6 days a week. The needs of bottling plants are highest on Thursdays since sales of packaged milk tend to be higher on Thursday and Friday than on other days of the week.

Because of these circumstances, this cooperative proposed that the Class III prices adopted for the southeastern markets of Georgia, New Orleans, and Chattanooga, be fixed from 5 to 15 cents under the Minnesota-Wisconsin price. This was proposed to enable the cooperative to absorb the costs of transporting reserve milk supplies to manufacturing plants and of maintaining unused capacity in its manufacturing plants during the seasonally short production months and on peak bottling days.

The principal cooperative in the southwestern markets proposed that the current provisions for pricing market surplus be maintained in the several orders throughout that region since such provisions tend to recognize individual market problems of surplus disposal. The problems mentioned by the witnesses for the cooperative are (1) uneven surplus milk volumes to be disposed of, and (2) costs of transporting milk to plants for manufacturing use. They stated that each market differs as to the volume of day-to-day, weekend, holiday, and seasonal surplus to be processed, which tends to result in variations in supply balancing costs among markets. Also, the surplus in each market is situated at varying distances from available processing plants. In Texas, for example, most of the manufacturing use outlets are situated in the northern part of the State at Muenster, Sulphur Springs, and Rusk. While the cooperative operates a small cheddar cheese plant at San Antonio, Tex., at times the San Antonio surplus cannot be processed there and is transported over 300 miles to Muenster or Sulphur Springs. During the Christmas holiday weekend in 1970, the cooperative moved 75 tank truck loads of surplus milk out of Texas to plants as far north as Iowa for manufacturing.

In support of their proposed butter-nonfat dry milk-cheese product price formula for markets in the Upper Midwest, proponent cooperatives pointed out that about half of the manufacturing grade milk in Minnesota and Wisconsin is now handled by as few as three cooperative associations. They contended that, because of this, cooperatives are in a position to influence the level of prices paid for such milk and, in turn, influence the level of the order prices based on the Minnesota-Wisconsin price. Any upward swing in prices, they indicated, could be detrimental to the processors of butter and nonfat dry milk.

Proponents also stated that there have been periods of time when the open market cheese prices have increased relative to prices of butter and nonfat dry milk. When this has resulted in higher pay prices at cheese plants, butter-powder plants also have tended to pay higher prices to hold their milk supplies in competition with cheese plants. Proponents argued that such higher pay prices at butter-powder plants should not be reflected in Federal order surplus prices when the market values of butter and powder are not increased also. They contended that the order price should reflect changes in the market value of manufactured products to provide handlers a fixed processing margin on the butter and nonfat dry milk they process.

The national trade associations of fluid milk and ice cream processors did not take a position at the hearing on whether there should be two or three classes of utilization. It is their position that under a three-class system the only products that should be included in Class II are yogurt, eggnog, cottage cheese, cream and any mixtures of cream and milk or skim milk containing 9 percent or more butterfat. While the associations did not endorse a three-class system, they proposed that under such a plan the difference between the Class II and Class III prices be not more than 10 cents.

Certain individual handlers, particularly those operating plants in more than one market, testified that because of intermarket competition each order should provide for the same classification and pricing scheme. One such handler testified further that the Class III price should be the lower of the Minnesota-Wisconsin price or a butter-powder formula price (Chicago butter price times 4.2, plus nonfat dry milk price times 8.2, less 48 cents). Another urged adoption of the dairy price support level as the Class III price. A third handler proposed the use of the announced price support, adjusted to a 3.5 percent butterfat basis by a differential factor of the Chicago butter price multiplied by 0.12, and further adjusted by plus 15 cents during the period September through March.

Proponents of using the dairy price support level as the Class III price urged that such price be adopted to provide a more stable price by avoiding the month to month changes that tend to occur in the Minnesota-Wisconsin price. Proponents pointed out that basing the Class III price on the price support level, which is announced for each marketing year (April–March), would result in handlers knowing the minimum price before the milk is received. The Minnesota-Wisconsin price is announced about 5 days after the end of each month.

Class III. As stated at the outset, two classes of utilization should be provided under each order for milk not needed for Class I use. Before discussing the basis for establishing an intermediate price class, consideration should be given to the Class III price issue since the level of such price bears on what the Class II price should be.

Basically, there are two questions to be resolved concerning the Class III price issue: (1) Should the Class III price be uniform among the 32 markets, and (2) what is the appropriate pricing mechanism for determining the Class III price in each market?

The purpose of the classification proposals considered at this hearing strongly suggests the same Class III price under each order. The essence of the proposals by producers and handlers alike was that a particular product should be classified in each market in the same class. Although the various witnesses were not in agreement on the classification scheme that should be adopted, the common purpose of their proposals was the resolution of the many differences among the 32 orders in the classification of milk. It was the general consensus that with the burgeoning intermarket sales of various milk products over increasingly wider areas, these differences in classification are causing undue competitive inequities among handlers in various markets seeking the same outlets for milk.

Any attempt to resolve these competitive inequities through the adoption of a uniform classification plan cannot be divorced from consideration of the prices that would be applicable to each class. The classification of milk does nothing more than determine what uses of milk will be subject to different levels of price. The equity benefits to handlers of using the same classification plan in all markets can be fully realized only if the price for each class is uniform (except for appropriate location adjustments) in all markets. The use of several different Class III price formulas in these markets, as would result under the proposals of the various cooperatives, would nullify much of the intended effectiveness of classifying a particular product in the same class in each market.

Certain cooperatives urged that the Class III price of a market reflect the supply "balancing" costs of individual cooperatives. This could lead only to a proliferation of different Class III prices rather than a reduction of price differences in these markets. In balancing milk supplies for the fluid market, a cooperative incurs various costs. The extent of these costs is dependent on many factors, including the cooperative's share of the market, the location and availability of surplus disposal outlets, whether it operates a manufacturing plant, and policies and practices of the organization and its management. If such costs were to be a main consideration in establishing the Class III price for an individual market, such price would need to vary greatly among markets since the supply balancing situation differs from market to market.

The costs of supply balancing services performed by a cooperative should be reflected as a service charge to the handlers who receive the benefit of the service. A cooperative's cost of supply balancing service varies among handlers according to each handler's procurement practices. A handler that regularly accepts the full production of a given number of producer-members of the cooperative incurs the costs of balancing his own supply. On the other hand, a handler that limits his purchases of milk from a cooperative to 5 days a week, for example, to match his daily bottling schedule shifts the burden of balancing his milk supply to the cooperative. Most supply balancing costs are attributable to the variation between the quantity of milk produced and the demand for milk for Class I use. Since the balancing costs are incurred in serving the Class I market, the incidence of the costs should fall on such use of milk. This connection between these services and the Class I demand is recognized in many of these markets through the assessment by cooperatives of a service charge on their milk delivered to handlers for Class I use.

On the basis of the above findings, it was concluded in the August 28, 1972, recommended decision that the same Class III price should prevail under each order to resolve to the fullest extent the many classification and pricing differences among these orders. Although this concept remains valid, we are persuaded by producer exceptions to the August 28 decision that complete uniformity in the pricing of Class III milk may not be attainable at this time if orderly marketing is to be preserved. For reasons described later, an alternate Class III price formula also should apply under 14 of the 32 orders rather than the one formula initially recommended. It must be emphasized, however, that the use of an alternate Class III price formula in these markets will negate in some degree the uniformity intended to be gained through classifying a particular product in the same class in each market. The adopted classification and pricing scheme will be helpful, nevertheless, in overcoming the marketing problems being experienced by handlers because of the differences in the classification and pricing plans now in use in these 32 markets.

In considering the appropriate mechanism for determining the Class III price in each market, it is consistent with the purposes of the statute authorizing milk orders that reserve milk supplies be priced at the highest practicable level compatible with orderly disposal of the milk. Excess market supplies normally must be channeled into manufactured products that compete on a national basis with similar products made from ungraded milk. It is important, therefore, that the price for surplus milk in the regulated markets be in close alignment with prices being paid by processors of manufacturing grade milk.

The Minnesota-Wisconsin price, which is now the surplus price under 17 of the 32 orders, is a representative pay price for about half of the manufacturing grade milk in the United States. This price reflects a farm price level determined by competitive conditions that are affected by the demand for all major manufactured dairy products. It also reflects the supply and demand of such products within a highly coordinated marketing system, which is national in scope. Use of the Minnesota-Wisconsin price as the Class III price, or principal Class III price determinant, will result in order prices for surplus milk that are in close alignment with the dominant price structure for raw milk within the manufacturing milk segment of the dairy industry.

Use of the Minnesota-Wisconsin price also tends to result in price parity between regulated and unregulated plants engaged in a similar enterprise since it provides the regulated manufacturer essentially the same margin for processing as is experienced in the unregulated market. The Minnesota-Wisconsin price is an average of prices being paid by processors who are meeting the competitive test of the unregulated market place. Competing processors of ungraded milk purchase their supplies from farmers at prices commensurate with the ability of the

more efficient processors to pay for raw milk. As shifts in the relationship between finished product prices take place, one group of processors may be able to pay dairymen higher prices than another. Other processors generally must meet these prices or risk the loss of their milk supplies. If a dairy concern in the unregulated manufactured products market fails to make the necessary adjustments to meet procurement competition, it will, in time, be forced out of business. This is a normal business risk in the unregulated competitive market.

If the Class III price were based solely on market prices of certain manufactured products (e.g., butter and nonfat dry milk) minus a specified processing allowance, as proposed by certain cooperatives, handlers under each order would be assured at all times, regardless of current values of milk competitively procured for the several manufactured product uses in Class III, of a predetermined operating margin. Such pool handlers are protected in procurement competition by being able, through the pool equalization fund, to pay the blended price to producers. This is an advantage not available to manufacturers purchasing unregulated milk. The unregulated processors must pay whatever price to dairy farmers is required to maintain milk supplies, which is determined from competition with other processors. Unless regulated handlers are to have a competitive advantage, or disadvantage, in the manufactured milk product market relative to unregulated plant operators, it is necessary to maintain under the milk orders a close alignment of the Class III prices with the farm prices paid by unregulated plants in the manufacturing milk industry.

In the August 28, 1972, recommended decision, the Minnesota-Wisconsin price was adopted as the Class III price under each order. This would have provided a continuation of the surplus price now applicable in 17 markets and a change in pricing for the remaining 15 markets where a number of different price formulas are now in use.

Upon further consideration of this issue in light of producer exceptions and the record evidence, it is concluded that in 14 of the 15 markets where the surplus price would have been changed the Class III price should be the Minnesota-Wisconsin price but not to exceed a butter-nonfat dry milk formula price. The markets where this pricing mechanism should apply are New Orleans, Northern Louisiana, Wichita, Central Arizona, Rio Grande Valley, Oklahoma Metropolitan, Red River Valley, North Texas, Central West Texas, Texas Panhandle, Lubbock-Plainview, Austin-Waco, San Antonio and Corpus Christi. The Class III price for the other market, Duluth-Superior, should be the Minnesota-Wisconsin price as initially recommended.

The surplus class price in all but two of these 14 markets is now based either entirely or in part on prices derived from some type of butter-nonfat dry milk formula. In the Oklahoma Metropolitan and Red River Valley markets, the surplus price is the U.S. Manufacturing price, but with a 10-cent reduction during six months of the year for milk used in butter, nonfat dry milk or hard cheese. For most of these markets, cooperatives argued in their exceptions to the August 28 decision that the present price formulas should remain in effect in the respective markets. It was contended that these formulas represent an historical recognition of particular surplus disposal conditions in these markets and that such recognition should not be abandoned at this time.

If a uniform classification and pricing scheme is to be implemented to any substantial degree, it is not possible to continue the variety of pricing formulas now applicable in these several markets as cooperatives urge. We recognize, however, that surplus prices in most of these markets historically have been tied directly to the market values of butter and nonfat dry milk. Therefore, it is reasonable to provide that the Class III prices in these 14 markets be limited to a butter-nonfat dry milk formula price should the milk equivalent value of these products become unduly low relative to the average price being paid in Minnesota and Wisconsin for manufacturing grade milk.

The same butter-nonfat dry milk price formula should be used in each of the 14 markets in conjunction with the Minnesota-Wisconsin price. This is consistent with the development of a uniform classification scheme for these markets. The formula adopted herein would be derived from converting the market prices of butter and nonfat dry milk to their milk equivalent values and subtracting a processing allowance. Specifically, such price would be computed by multiplying the average monthly price of 92-score bulk butter at Chicago by 4.2, then multiplying the average monthly price of spray process nonfat dry milk in the Chicago area by 8.2, and then subtracting 48 cents from the sum of the above results. This formula price, when used in conjunction with the Minnesota-Wisconsin price, is commonly referred to in the trade as the "butter-powder snubber."

The adopted formula is the same, or virtually the same, as all other butter-nonfat dry milk formulas now in use under orders applicable outside the 32-market area. In all cases, such formulas are being used in conjunction with the Minnesota-Wisconsin price in the same manner as proposed herein.

As indicated, the Class III price under the Duluth-Superior order should be the Minnesota-Wisconsin price even though the surplus price in this market is now based on a butter-nonfat dry milk formula. The present surplus price historically has averaged somewhat under the Minnesota-Wisconsin price. Conditions in this market do not support a continuation of this lower price level for surplus milk being processed into products such as butter, nonfat dry milk and hard cheese, residual products that would be included in Class III under the revised Duluth-Superior order.

The Duluth-Superior order regulates the handling of milk in certain areas of Minnesota and Wisconsin. Because of their location, regulated handlers in this market are operating within the competitive sphere of the largest concentration of processors of butter, nonfat dry milk and cheese in the United States. As noted earlier, about half of the manufacturing grade milk in the country is produced in this two-State area. It is the prices being paid in this area for such milk that are used in determining the "Minnesota-Wisconsin price." Use of this price for pricing Class III milk in the Duluth-Superior market will result in producer milk used in the residual products being priced at a level commensurate with unregulated milk that is being processed in the same general area into like products. A lower return to the graded producers on the Duluth-Superior market for surplus milk priced under the order is not warranted under the competitive conditions existing in this area.

It should be noted that in all other regulated markets in this two-State area producer milk processed into the residual products is priced at the Minnesota-Wisconsin price. Such markets include Minneapolis-St. Paul, Minnesota-North Dakota, and Chicago Regional, all of which are near the Duluth-Superior market. There is no indication that regulated handlers in the Duluth-Superior market are faced with conditions uniquely different from those faced by handlers in these other markets in disposing of surplus milk.

The surplus pricing adopted for the 32 markets will result in a significantly greater coordination of surplus prices under all Federal milk orders than is now the case. With the exception of one relatively small market (Appalachian), prices under all orders for milk used in the key residual products (butter, nonfat dry milk and cheese) would be based on the Minnesota-Wisconsin price, either alone or in conjunction with the butter-powder snubber adopted herein. As noted earlier, such products are marketed within a highly coordinated marketing system that is national in scope.

Class II. Certain uses of producer milk not needed for Class I purposes should be priced at a somewhat higher level than that applicable to milk in the adopted Class III uses. These higher-valued uses, to be included in the Class II classification, were set forth at the beginning of this discussion on pricing surplus milk. The Class II price, which should be the same under each order, should be the Minnesota-Wisconsin price plus 10 cents.

Of the products adopted herein for inclusion in Class II, one of principal importance is cottage cheese. In 1970 about 840 million pounds of the skim milk and butterfat utilized by pool handlers under the 32 orders was used to produce cottage cheese. For this discussion the term "cottage cheese" encompasses cottage cheese (i.e., creamed cottage cheese), lowfat cottage cheese, and dry curd cottage cheese.

Five of the 32 orders under consideration now provide a higher price for milk used in cottage cheese than the price provided for milk used in butter, nonfat

dry milk or cheddar cheese. There are several distinguishing characteristics of cottage cheese production that support a higher price for milk in this use than for milk channeled into the residual surplus uses. There is little, if any, relationship between the quantity of cottage cheese made and the amount of reserve milk in a market, as is the case with respect to butter and nonfat dry milk, for instance. Unlike such other manufactured products, cottage cheese has a more limited storage life and must be processed on a regular basis. Thus, as in the case of fluid milk products, handlers normally want adequate supplies of fresh, high-quality producer milk to be made available at their plants at all times for cottage cheese use.

Although some cottage cheese is made in specialized country plants, as the economics of location would suggest, cottage cheese production is commonly an integral part of the processing operations of fluid milk distributing plants. Such plants are usually located in or near the populated centers of the market. This entails a greater hauling expense for producers than when the reserve milk is processed in the production area, as is generally the case with respect to butter, nonfat dry milk and hard cheese manufacture.

The adopted Class II price (the Minnesota-Wisconsin price plus 10 cents) is a reflection of some of the additional value which producer milk used in cottage cheese has to regulated handlers. Although local producers represent the regular source of milk for cottage cheese production, a handler may choose to use milk from some other source for this purpose. Such milk could not be obtained on a regular basis, however, at less than the cost of producer milk under the adopted pricing scheme.

Rather than produce his own cottage cheese, a handler might choose to purchase the finished product from some other Federal order market where a lower price applies to milk for cottage cheese. There is no indication, however, that under the adopted pricing such a handler could materially enhance his competitive position relative to handlers using producer milk. The cost of transporting cottage cheese, a somewhat bulky and perishable item, from distant areas to outlets in the 32 markets would generally negate any seeming price advantage attributable to differences in applicable order prices.

In the New Orleans market, certain handlers process a type of cheese described locally as "Creole cheese". This product, which apparently is limited to this market, was described at the hearing as being similar to cottage cheese. Accordingly, Creole cheese should be included in the same class as cottage cheese under the New Orleans order.

Milk used in yogurt should be priced at the Class II price level. Yogurt is a soft, nonfluid, "spoonable" product. It is not a beverage as are other products defined herein as fluid milk products.

Yogurt has some of the marketing characteristics of cottage cheese, although, unlike cottage cheese, very limited quantities of yogurt are made from milk priced under the 32 orders. In 1970, about 13 million pounds of skim milk and butterfat were utilized in yogurt production in the 32 markets. To the extent of this limited production, however, processors generally use regular supplies of inspected milk. Although yogurt can be made from cream and nonfat dry milk, processors prefer milk. Since yogurt has a relatively limited shelf life, it is made on a continuing basis, thus requiring a regular supply of milk at all times. As in the case of cottage cheese, these conditions warrant that producer milk in yogurt be priced at a level above the price for milk disposed of through the traditional residual uses for surplus milk.

Class II also should include frozen desserts (including commercial milkshake and ice milk mixes), custards, puddings, pancake mixes, dietary and infant formulas, and sales of bulk milk and cream to commercial food processors for use in food products. In the August 28 recommended decision, such uses of skim milk and butterfat were proposed to be included in Class III. Upon consideration of exceptions filed to that decision by cooperatives, it is concluded that market conditions support a higher price for producer milk in such uses than was initially recommended.

As producers pointed out in their exceptions, the rationale set forth in the August 28 decision for including cottage cheese in an intermediate class is in several respects applicable to these other products just listed. The demand for producer milk used in these products is related closely to the current consumer demand for such products. Thus, handlers normally want adequate supplies of producer milk made available at their plants in the quantities and at the times needed for these uses. This is in contrast to the more storable residual "hard" products. Also, the processing of such products often takes place at the market center, which entails a greater hauling expense for producers than when reserve milk is processed in the production area. Moreover, it is doubtful that handlers in general would be able to obtain alternative supplies of milk or product ingredients at less than the cost of producer milk under the adopted pricing provisions.

Cooperatives proposed that the Class II price in most of these markets range from 10 to 20 cents over the Minnesota-Wisconsin price. The lower 10-cent differential (to apply to both cottage cheese and frozen desserts) was proposed for those markets where local ungraded milk supplies represent a significant competitive factor for regulated processors of ice cream and other frozen desserts. The national associations of fluid milk and ice cream processors contended that any price differential over the Class III price for milk in an intermediate class should not be more than 10 cents per hundredweight. In supporting this position, individual handlers stressed that any greater price differential would seriously jeopardize the competitive position of regulated handlers using producer milk relative to unregulated processors relying largely on ungraded milk.

With respect to the several milk uses at issue in the cooperatives' exceptions, the preponderance of evidence at the hearing focused largely on the marketing of frozen desserts. The marketing conditions for frozen desserts are somewhat varied throughout the 32-market area. Some regulated handlers rely regularly on producer milk for use in frozen desserts. In some of the southern markets where milk supplies tend to be shorter than elsewhere, handlers use producer milk when it is available but often must supplement such milk with purchases of condensed skim milk and nonfat dry milk. Some handlers, wherever located, rely on these concentrated forms of milk entirely in processing frozen desserts. Also, the concentrated products used may be made from either graded or ungraded milk. In addition, much of the processing of frozen desserts is done at unregulated plants. Some unregulated processors rely on ungraded milk, while others use milk surplus to the needs of regulated fluid markets. Other unregulated processors use concentrated forms of milk from either graded or ungraded sources.

The marketing situation in the 32-market area for the several other milk uses in question (custards, puddings, pancake mixes, dietary and infant formulas, and sales to commercial food processors) is essentially the same as for frozen desserts.

Under these varying conditions, the Class II price should be set at 10 cents over the Minnesota-Wisconsin price. Pricing Class II milk at this level should permit regulated handlers using producer milk to remain competitive in the marketplace with the unregulated sector in the sale of Class II products. At the same time, such price will reflect the minimum additional value of such high quality producer milk supplied to regulated handlers over the widespread area covered by the 32 markets at the times and places, and in the quantities, needed for the several Class II uses.

It is recognized that under the varied conditions just described an individual handler may find that producer milk does not represent the cheapest source of milk for his Class II uses. Presumably, the alternative source would be concentrated forms of milk since health regulations would not permit the receipt of ungraded supplies of whole milk at a pool distributing plant, and graded supplies would not be available on a regular basis at less than the Class II price. Under the revised allocation provisions adopted herein, receipts of nonfluid other source milk such as condensed skim milk or nonfat dry milk that are used in a Class II product would be allocated directly to the handler's Class II uses, with no obligation applying under the order to such milk. Under this arrangement, the handler could choose to use the other source milk without the cost impact of down-allocation should the cost of such milk become less than the cost of pro-

ducer milk. The handler thus could rely upon whichever source of milk best fits his competitive and operational circumstances.

Classifying the several types of cream items, some of which are now in Class I while others are in Class II or Class III, in Class II will accommodate proponents' desire for a lower price for milk used in cream products and at the same time price at the same level a variety of products that compete with each other. Half and half, whether sterilized or unsterilized, and light cream are used principally by consumers in coffee. Aerated cream and sterilized and unsterilized whipping cream are used as dessert toppings. Both graded and ungraded sour cream and sour mixtures are used by consumers for similiar purposes. Like classification for these cream products will result in uniform pricing to handlers for milk used in products competing in the same trade channels for essentially similar uses.

Although the present Class I cream products sold in these markets must be made from inspected milk, which is delivered regularly by producers to distributing plants, there was general agreement by producers and handlers that milk sold in the form of such products should no longer be subject to the Class I price. Relative to the total Class I sales of producer milk in these markets, cream products represent only 1.5 percent of the present Class I market. Thus, this classification change will have relatively little effect in total on the returns to producers.

In connection with the reclassification of cream products, it is desirable to define a new term—"fluid cream product." "Fluid cream product" would mean cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

With the reclassification of cream, movements of cream to or from a plant no longer should be considered in determining whether a plant meets the pooling requirements of the order.

Class II milk should include eggnog. Although eggnog is prepared for use as a beverage and is now a Class I use in 9 of the 32 markets, proponent cooperatives contended it should not be a Class I product because of competition from imitation products. Eggnog has a relatively high butterfat content and the limited sales of the product are highly seasonal. In 1970, only about 12 million pounds of eggnog, with an average butterfat content of 7 percent, were disposed of by pool handlers under the 32 orders. An estimated 40 percent of the marketings of this type of product is in the form of imitation eggnog. Classification of eggnog in Class II rather than Class I will materially enhance the competitive position of the product in the marketplace.

Most of the orders now provide that any "filled" product containing 6 percent or more nonmilk fat (or oil) shall be in the surplus price class. With the establishment of an intermediate price class under each of the 32 orders, it is appropriate that any such filled products that resemble the proposed Class II products made with milk fat likewise be included in this class. The substitution of nonmilk fat for milk fat in a product merely changes the composition of the product and not its use. For competitive reasons, a comparable classification of products made with milk fat and their filled counterparts is necessary.

Condensed milk or skim milk in bulk, plastic cream, frozen cream and anhydrous milk fat are "intermediate" products that also should be included in Class II. These products are not end uses in themselves but instead are used in making other products, including frozen desserts and food products such as candy and soup. Under the classification adopted herein, frozen desserts and food products are Class II uses for milk. Accordingly, producer milk used in the several intermediate products likewise should be priced at the Class II level.

A Class II classification should not apply to evaporated or condensed milk or skim milk in consumer-type containers as the cooperatives proposed. Such storable products should remain in the lowest price class. A Class III classification for producer milk in these products will permit such uses to remain as a competitive outlet for milk surplus to the needs of the Class I market. Such products made from milk regulated under these orders must compete over wide areas with the same products processed from ungraded milk or other graded milk that is often priced at no more than the Minnesota-Wisconsin price. Comparable pricing should prevail under these 32 orders.

Although cooperatives proposed Class II price differentials of 10, 15, 20, and 25 cents, the Class II differential for each market should be the same. The distribution of the adopted Class II products from a single plant often extends over a broad region encompassing several Federal order marketing areas. Numerous examples were cited on the record concerning the widespread sales of yogurt, cream items, frozen desserts and cottage cheese in particular. Because of this intermarket competition, a uniform Class II price differential should be provided in these orders to complement the uniform classification provisions. A price differential of 10 cents reasonably reflects the added value which handlers are able to pay for producer milk in such uses as compared to procuring milk supplies or finished products from other sources.

In proposing a generally uniform classification plan for the 32 markets, cooperatives emphasized that any new plan adopted should not result in lower total returns to producers. Handlers, on the other hand, stressed that their total cost of milk should not be increased.

Providing for classification and pricing provisions that are generally uniform among the various markets cannot necessarily encompass at the same time the maintenance of precisely the same value of producer milk in each market. With the many classification and pricing differences that now exist among the 32 orders, resolution of these differences through a uniform classification and pricing plan would be expected to have some effect on the value of producer milk in individual markets. While the provisions adopted in this decision are not designed to change the value of producer milk in the aggregate, their effect on producer returns or handlers' costs in an individual market cannot be controlling in deciding on the matter of classification and pricing here under consideration.

4. *Miscellaneous classification and accounting changes.* The following findings and conclusions relate to certain miscellaneous classification proposals by handlers and producers and to some of the order changes that are necessary to implement the revised classification plan adopted herein for each of the 32 subject orders.

(a) *Other source milk definition.* A common other source milk definition should be adopted for each order.

Because of the revised classification plan, certain changes in the present other source milk definition of each order are necessary. This definition would continue to serve, however, the present function of implementing the identification of various categories of receipts at a regulated plant.

At present, fluid milk products from any source other than producers, cooperatives acting as a handler for farm bulk tank milk, pool plants, and plant inventory at the beginning of the month are considered as other source milk.[3] Under the revised classification plan, however, cream no longer would be defined as a fluid milk product. To facilitate the application of other provisions of each order, it is desirable, nevertheless, that fluid cream products, when in bulk form, continue to be treated in the same manner as fluid milk products for purposes of applying the other source milk definition.

Other source milk should include any receipts in packaged form of fluid cream products, eggnog or yogurt (or any filled product resembling such products). These are Class II products under the revised classification plan.

Producers and handlers proposed that Class II products received at a pool plant in packaged form and then disposed of from the plant without further processing be treated as "pass-through" products. Under this treatment such "pass-through" products would not be considered as other source milk and would not be subject to the allocation and pricing provisions of the order.

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[3] The terms "pool plant" and "nonpool plant" will be used occasionally throughout this decision. Most of the 32 orders define such terms for the purpose of distinguishing between those plants that are fully regulated under the order and those plants that are not so regulated. In some orders, the terms "fluid milk plant" and "nonfluid milk plant," or "approved plant" and "unapproved plant", are used for the same purpose. When reference is made in this decision to a "pool plant" or a "nonpool plant", it is intended (unless noted otherwise) that the reference apply correspondingly to the other types of plants.

Although no handler obligation would apply under the provisions adopted herein to these receipts of packaged Class II products, it is desirable for accounting purposes that such receipts be defined as other source milk. This accounting procedure will preclude the recordkeeping difficulties that might otherwise be experienced in accounting separately for inventories and sales of Class II products processed in the handler's plant versus those received at the plant in packaged form from other plants. As provided herein, such receipts of other source milk would be allocated directly to the handler's Class II utilization, rather than being allocated to the extent possible to the handler's lowest utilization as is provided in some cases for other types of other source milk.

The orders now provide that manufactured products from any source that are reprocessed, converted into, or combined with another product in the plant shall be considered as other source milk. For accounting purposes under the order, such manufactured products should include dry curd cottage cheese received at a pool plant to which cream is added before distribution to consumers. When used to produce cottage cheese or lowfat cottage cheese, the receipts of dry curd would be allocated under the adopted provisions directly to the handler's Class II utilization. No handler obligation would apply under the order to such receipts.

The orders should provide that products manufactured in a pool plant during the month and then reprocessed, converted into, or combined with another product in the same plant during the same month not be defined as other source milk. A typical processing operation would be for a handler to make condensed skim milk from producer milk and then use the condensed product in making ice cream. It is intended under this situation that the producer milk be considered as having been used to produce ice cream. The condensing operation is merely one of the steps performed by the handler in processing ice cream from raw milk.

Other source milk should include any disappearance of manufactured milk products for which the handler fails to establish a disposition. Fourteen of the 32 orders now have a provision concerning the unaccounted for disappearance of such products. The other 18 orders do not specify such disappearance as other source milk.

It is reasonable that each handler be required to account fully for all milk and milk products received or processed at his plant. Otherwise, a handler with inadequate records may have an opportunity to gain a competitive advantage over his competitors who properly account for all milk. Specifying any unexplained disappearance of manufactured milk products as other source milk will contribute to a uniform application of the regulatory plan to all handlers.

(b) *Accounting for nonfat milk solids added to milk and milk products.* Except for two orders, no change should be made in the present method of classifying the skim milk equivalent of nonfat milk solids added to a fluid milk product.

Currently, all but two of the orders under consideration provide that a modified fluid milk product shall be classified as Class I in the amount of the weight of an equal volume of an unmodified product of the same nature and butterfat content. The remaining skim milk equivalent of the nonfat milk solids in such product is classified in the lowest class.

The Neosho Valley and Fort Smith orders presently do not set forth a specific procedure for accounting for nonfat milk solids added to milk and milk products. As proposed by producers, such orders should be made uniform in this respect with the other orders under consideration.

Cooperatives proposed that the amount of a modified fluid milk product that is classified as Class I milk be the actual weight of the modified product rather than the weight of a like unmodified product. Proponents stated that the use of the weight of the modified product would accommodate some of the technical problems of laboratory analysis when this procedure is used in verifying the amount of nonfat milk solids added to natural milk or skim milk. They indicated that since the results of laboratory tests are expressed as a percentage of the weight of the product being tested, using the actual product weight factor would simplify the accurate accountability of modified products.

There was no showing of the extent to which laboratory analysis of modified products is used in verification by market administrators in these markets. Also, there is no indication that modified products are not being accounted for in an accurate manner. Thus, it is not clear from this record that the proposed procedure is necessary for more accurate product accounting or that it would result in any net saving in administrative cost.

Proponents did not attempt to demonstrate any economic basis for making the slightly greater charge for nonfat milk solids used to modify fluid milk products that would result from their proposal. Their proposed procedure would increase slightly the quantity of a modified product priced in Class I. A gallon of modified skim milk containing 11 percent nonfat milk solids, for example, would be classified in Class I on an 8.7 pounds weight factor as compared to the present basis of an 8.63 pounds weight factor.

The present method of classifying modified fluid milk products increases total Class I sales only to the extent of the volume of the unmodified product that the added nonfat milk solids replaces. In the absence of evidence that the present procedure is inappropriate it should be continued. The present procedure is used under Federal orders generally and, therefore, carries out the objective of uniformity in this respect.

Handlers may add nonfat milk solids to several of the proposed Class II products, such as half and half and light cream. Each order should provide in this case that the entire weight of the skim milk equivalent of the solids added by classified in Class II. This procedure would differ from that applicable to modified fluid milk products in that no part of the skim milk equivalent of the added solids would be classified in the lowest class. As described in detail later, nonfat dry milk or condensed milk that is added to a Class II product would be allocated directly to the handler's Class II use. Thus, classification of the entire skim milk equivalent in Class II would not affect adversely the handler's pool obligation under this allocation procedure.

(c) *Classification of milk transferred or diverted to other plants.* Certain changes should be made in the provisions of each order that prescribe the classification of fluid milk products that are transferred or diverted from a pool plant to another plant. Several of the changes become necessary with the adoption of three classes of utilization in place of the present two classes. Other changes are appropriate for purposes of uniformity among orders and clarity in the classification of milk.

Under the adopted classification plan, fluid cream products would be classified as Class II products. If such products are transferred to another plant in packaged form, the skim milk and butterfat contained therein should be classified as Class II milk since these items are moved in final form. The classification of fluid cream products when disposed of in bulk form, however, is determinable only by following the movement of the bulk product to its subsequent use. Thus, it is necessary that fluid cream products that are transferred in bulk form from a pool plant to another plant be classified in a manner similar to that now used in classifying transfers of bulk fluid milk products.

Each order now prescribes a procedure for classifying transfers of bulk fluid milk products from a pool plant to a nonpool plant that is not an other order plant or a producer-handler plant. To determine such classification, the nonpool plant's utilization must be assigned to its receipts of milk from each source. Some amplification of this procedure is appropriate to set forth clearly the priority for assigning the different types of plant use to the different sources of fluid milk products and bulk fluid cream products received at the nonpool plant.

Under the adopted assignment priorities, the first step is to assign the nonpool plant's Class I utilization to its receipts of packaged fluid milk products from all federally regulated plants. Such receipts should receive first priority on the nonpool plant's Class I use since all orders provide that such packaged transfers from a pool plant to an unregulated nonpool plant shall be classified as Class I milk. Thus, any Class I route disposition of the nonpool plant in the marketing area of a Federal order, and any transfers of packaged fluid milk products from the nonpool plant to plants fully regulated under such order, would be assigned, first, to the nonpool plant's receipts of packaged fluid milk products

from plants fully regulated under such order and, second, to any such remaining packaged receipts from plants fully regulated under other Federal orders.

A similar assignment of any such remaining disposition (i.e., the aforesaid Class I route disposition and transfers of packaged fluid milk products) then would be made to the nonpool plant's receipts of bulk fluid milk products from pool plants and other order plants. Any other Class I disposition of packaged fluid milk products from the nonpool plant, such as route disposition in unregulated areas, would be assigned to any remaining unassigned receipts of packaged fluid milk products at the nonpool plant from plants fully regulated under any Federal order.

After these assignments, any Class I use at the nonpool plant that is attributable to the Class I allocation at a Federal order plant of fluid milk products transferred in bulk from the nonpool plant to the regulated plant would be assigned next. Such use would be assigned, first, to the nonpool plant's remaining unassigned receipts of fluid milk products from plants fully regulated under that order and, second, to any such remaining receipts from plants fully regulated under other orders.

Additional unassigned Class I utilization at the nonpool plant then would be assigned to the plant's receipts of Grade A milk from dairy farmers and unregulated nonpool plants that are determined to be regular sources of Grade A milk for the nonpool plant. Any remaining unassigned receipts of fluid milk products at the nonpool plant from plants fully regulated under any order would be assigned to any of the nonpool plant's remaining Class I utilization, then to its Class III utilization, and then to its Class II utilization.

Following these assignments, any receipts of bulk fluid cream products at the nonpool plant from pool plants and other order plants would be assigned to the nonpool plant's remaining unassigned utilization in each class. Such assignment would be made in sequence beginning with the lowest class.

In determining the classification of any transfers or diversions from a pool plant to a nonpool plant, the utilization of any transfers from the nonpool plant to another unregulated nonpool plant also must be established. In this case, the same assignment priorities just outlined should apply also at the second nonpool plant.

Certain changes should be made in each order concerning the classification of products transferred from a pool plant to a producer-handler. Under the revised classification plan, bulk fluid cream products transferred from a pool plant to a producer-handler should be assigned to the extent possible to the latter's Class III use, and then Class II use. If the producer-handler does not have enough utilization in these classes to cover such transfers, any remaining transfers should be classified as Class I milk.

As in the case of all other fluid milk products, such transfers of cream are now classified as Class I milk. Such classification tends to assure that producers do not carry for producer-handlers the burden of maintaining reserve supplies for the Class I sales of producer-handlers. With the removal of cream from the Class I classification, as adopted herein, a mandatory Class I classification of cream transfers to producer-handlers would not be necessary for this purpose.

Each order should provide that fluid milk products transferred from a pool plant to a producer-handler under another order be classified as Class I milk. With one exception, this classification now applies under these orders with respect to such transfers made on an intramarket basis. The San Antonio order has no provisions for classifying such transfers since it does not contain a producer-handler definition.

The producer-handlers, in their capacity as handlers, have been exempt from the pricing and pooling provisions of the various orders. In consideration of this exemption, each order, except as noted, requires a Class I classification of all fluid milk products that are transferred from a pool plant to a producer-handler as defined under that particular order. Inasmuch as the producer-handler exemption under each order is predicated on essentially the same basis, a Class I classification of milk transferred from a pool plant regulated under one order to a producer-handler as defined under another order would be in keeping with the general basis for producer-handler exemption.

In addition to the Class I classification of all fluid milk products transferred from a pool plant to a producer-handler, several orders provide for a similar classification of all fluid milk products transferred to a Government-operated plant. Such plants are exempt from the pooling and pricing provisions of the order in much the same manner as producer-handlers. It is appropriate, therefore, that the adopted method for classifying bulk fluid cream products transferred to a producer-handler likewise apply to transfers of bulk fluid cream products to Government-operated plants.

The orders should be uniform with respect to the conditions under which the classification provisions apply to bulk milk movements from one regulated market to another. Although each order now has the same rules for classifying such movements of milk, their application is limited under some orders to only those movements in the form of interplant transfers. This is because such orders do not permit milk to be moved between markets by diversion.

Since the advent of farm bulk tanks, the diversion of producer milk from pool plants to manufacturing plants has been a common method of handling milk not needed for the fluid market. Under some orders, such diversions are permitted to be made only to unregulated nonpool plants. For a number of markets where available manufacturing facilities are associated with another regulated market, the orders permit producer milk to be diverted to other order plants. Corollary provisions in the order regulating the manufacturing plant specify that such milk, although having been delivered directly from the farm, shall not be considered as producer milk in the market to which diverted if the milk comes into the market for manufacturing use.

In connection with developing uniform classification provisions for the 32 orders, provision should be made under each order for the diversion of milk to other order plants for Class II or Class III use. This will contribute to a more uniform application of the classification provisions to all regulated handlers. At the same time, such provisions will foster the efficient handling of surplus milk in these markets by permitting the disposal of such milk directly from farms to manufacturing plants in other markets, rather than having such intermarket movements limited to the more expensive method of transferring milk from one plant to another. With the safeguards adopted herein, returns to producers in the market to which the milk is diverted will not be affected by the processing of this surplus milk in their market since the diverted milk will continue to be pooled in the market from which diverted.

The classification of fluid milk products transferred or diverted from a pool plant to a nonpool plant that is not an other order plant or a producer-handler plant should not be contingent upon any distance limitation. Presently, 20 of the 32 orders under consideration provide for the Class I classification of milk moved beyond a specified distance, regardless of its ultimate use at the nonpool plant. In the case of milk transferred to less distant plants, recognition is given under the classification provisions of the 20 orders to the nonpool plant's actual utilization.

Cooperatives proposed the removal of all mileage limitations affecting the classification of transfers and diversions. They claimed that these provisions are not appropriate under today's marketing conditions and that their removal would facilitate the orderly disposition of reserve milk supplies.

The conditions prompting the initial adoption of these mileage limitations no longer prevail, thereby making their continued use inappropriate. The use of mileage limitations evolved in large part from the relatively high transportation cost of milk relative to its value for manufacturing and from the administrative cost of verifying the utilization of milk transferred to plants distant from the local market. Under today's conditions of distribution, milk regularly moves greater distances as a routine matter. Moreover, Federal orders now operate throughout much of the United States. Arrangements for verifying the utilization at distant plants can be made easily through the facilities of the various market administrators' offices.

Also, the mileage limitations often are no longer consistent with the existing supply patterns. Milk is often moved considerable distances from producers' farms to distributing plants. When such milk is not needed for fluid use, it is usually diverted to manufacturing plants

located close to the production area. Classifying such milk in Class I because of applicable mileage limitations is not consistent with the obvious manufacturing use of the milk. Removal of such provisions will promote uniformity in classification among the 32 markets.

(d) *Classification of end-of-month inventory.* Each of the orders should be made uniform with respect to the classification of inventory on hand at the end of the month. Fluid milk products in either packaged or bulk form that are in a handler's end-of-month inventory should be classified as Class III milk. Such inventory should be subject in the following month to reclassification in a higher class. Ending inventory of fluid cream products, eggnog and yogurt, when held in bulk form, likewise should be classified in Class III and subject to reclassification. Such products held in packaged form at the end of the month should be classified as Class II milk.

Presently, 22 of the 32 orders classify all ending inventories of fluid milk products (which now include most cream products) in the lowest class. Under the remaining orders, such inventories in bulk form are classified in the lowest class, while a Class I classification applies to such inventories in packaged form. In the latter case, a handler's obligation for the Class I inventory is adjusted in the following month by whatever amount the Class I price in such month changes from the Class I price level initially applicable to the inventory. This assures that such inventory is priced on a current basis when disposed of on routes.

Cooperatives proposed that each order classify all ending inventories of fluid milk products in Class III. They claimed that this procedure would be less complicated for handlers and would facilitate the administration of the order since handlers only occasionally would have any adjustment in their pool obligation as a result of having Class III inventory reclassified in a higher class. Proponents stated that with packaged inventory in Class I, as under 10 of these orders now, each handler usually has some adjustment each month in his obligation for Class I inventory. The cooperatives' proposed classification of ending inventory was supported by handlers.

In the interest of establishing uniform classification provisions among the orders, the same procedure for classifying end-of-month inventory should be adopted for each of the orders. Either type of inventory classification procedure now being used in these markets results over the long run in essentially the same pool obligation for handlers and the same returns to producers. In this circumstance, the substantial support among the industry for classifying all ending inventories of fluid milk products in the lowest class suggests that this procedure be used under all orders. Under this procedure, such inventories would be subject in the following month to reclassification in a higher class, as determined through the alocation of a handler's receipts to his utilization. A charge to the handler at the difference between the Class III price for the preceding month and the Class I or Class II price, as applicable, for the current month would apply to any reclassified inventory. This is the same reclassification procedure that now applies under the orders to inventories of fluid milk products in bulk form.

Fluid cream products in bulk form that are on hand at the end of the month likewise should be classified in Class III. As in the case of bulk milk, the final use of cream being held in bulk form is not necessarily apparent from that form. The cream must be followed to its ultimate use, which may be in any class. Accordingly, it is reasonable to classify any closing inventory of bulk cream in Class III and then apply a reclassification charge should the cream, as beginning inventory the following month, be allocated to a higher class.

Fluid cream products, yogurt and eggnog that are on hand in packaged form at the end of the month should be classified in Class II, the class of expected ultimate use, rather than in Class III as would be the case for ending inventories of such products in bulk form. The higher classification will accommodate the treatment adopted herein whereby such products that are received at a pool plant in packaged form and disposed of in the same packages would be permitted to "pass through" the plant without any pool obligation or down-allocation. In this connection, the ending Class II inventory, as Class II inventory on hand at the beginning of the following month, would be allocated in the following month directly to the handler's Class II utilization.

Cooperatives proposed that for classification purposes ending inventory include only those products that are actually on the premises of a pool plant. Under their proposal, the premises of a plant would be limited to a location having equipment for receiving, cooling, processing and storing milk. However, products being held in trucks parked at that location would not be a part of the handler's closing inventory. Also a storage facility at a distributing point for packaged products in transit to wholesale and retail outlets would not be considered under their proposal as an extension of the premises of a plant. Cooperatives proposed also that ending inventory include any bulk milk that is in transit from a pool plant to another plant at the end of the month. Proponents claimed that defining ending inventory in this manner would facilitate the administration of the order.

The present orders do not specify at what point in a handler's distribution system fluid milk products shall be or shall not be considered for classification purposes as being in a handler's closing inventory. This is a matter that has been left to the accounting guidelines established by market administrators in their administration of the orders. It is recognized that at the close of the monthly accounting period fluid milk products that have been packaged but not yet delivered to the place of sale may be at any one of several places in a handler's distribution system. Depending on the handler's method of operation, such places could include the cold storage room within his processing plant, trucks parked on or near the plant's premises, distributing points, or trucks in transit to distributing points or places of sale. No significant problems concerning the determination of what constitutes closing inventory were brought to light at the hearing. Therefore, the cooperatives' proposal in this regard need not be adopted at this time.

For the first month that the revised classification plan is effective, certain transitional provisions relating to inventory should apply. Such provisions are necessary to assure that all handlers under an order will be subject to the same pricing for milk used in packaged fluid milk products and fluid cream products whether such products enter into the month's accounting as beginning inventory or are made from current receipts of producer milk.

As indicated, 22 of the orders under consideration presently classify ending inventories of fluid milk products, including cream items, in the lowest class. Thus, in the last month that the present classification plan is effective, handlers under these orders will have paid the corresponding class price for these products. In the first month under the new plan, such inventories that had been held over in the form of a fluid milk product or a bulk fluid cream product would be allocated to the extent possible to the handler's Class III utilization. Should such inventories be allocated to a higher class, the appropriate reclassification charge would apply.

Under the new plan, beginning inventories of fluid cream products in packaged form normally would be allocated directly to a handler's Class II utilization. Such allocation assumes that the products were priced at the Class II price in the preceding month. Since this would not be the case for the first month under the new amendments, such inventories should be allocated in the first month to the extent possible to Class III, as in the case of inventories of fluid milk products and bulk fluid cream products. A reclassification charge should apply if a higher classification results.

Under the remaining 10 orders, which now classify ending inventories of packaged fluid milk products in Class I, a pool credit should apply to such inventories in the first month that the revised classification plan is effective. Under the new plan, beginning inventories of fluid milk products and, for the first month, all fluid cream products would be allocated to the extent possible to Class III. Again, this allocation assumes that such inventories were priced at the lowest class price in the preceding month. Since such inventories in packaged form will have been priced at the preceding month's Class I price, handlers under these 11 orders should receive a credit on such packaged inventories equal to the difference between the preceding month's Class I price and lowest class price. If a higher classification results through the allocation procedure, the appropriate reclassification charge would apply.

(e) *Classification of shrinkage, milk dumped and milk disposed of for animal feed.* Each of the orders should provide for generally uniform provisions for classifying skim milk and butterfat dumped, disposed of for animal feed, or in shrinkage.

In the case of shrinkage, the cooperative associations requested that no change be made in the present order provisions, except to classify shrinkage in Class III insofar as it is now classified in the lowest class of each order.

The shrinkage provisions adopted herein are basically similar to the shrinkage provisions now effective under 27 of the 32 orders. The classification of shrinkage in the lowest use class (subject to certain limitations), as now provided in all the orders, would be continued under the adopted three-class system. Modifications of shrinkage provisions in the individual orders are in the nature of certain refinements now applicable under several of the orders.

The amount of shrinkage that may be classified in the lowest class under the 32 orders is presently limited with respect to receipts of producer milk and certain interplant transfers. In 31 of the orders, 2 percent is the maximum shrinkage allowed in the lowest class in the case of such receipts. One and one-half percent is the rate usually applicable to bulk receipts of interplant transfers, but generally no limit applies in the case of receipts of other source milk requested for lowest class use. These allowances are adopted for each order in the new uniform provisions.

Also adopted is the commonly used method of prorating total plant shrinkage to (1) those kinds of receipts on which the shrinkage limitations apply, and (2) other receipts of fluid milk products in bulk form, such as milk from other order plants or unregulated supply plants for which a Class II or Class III classification is requested. To the extent that the quantity of shrinkage prorated to the first category exceeds the established limit, the excess would be classified in Class I.

The adopted provisions recognize that shrinkage normally experienced varies with the type of handling involved. More loss is usually experienced in plant processing than in merely receiving milk for delivery to another handler. Thus, with respect to delivery of milk by a cooperative association handler from farms to plants in tank trucks, a Class III shrinkage allowance of 0.5 percent of such milk is provided. Any excess shrinkage over 0.5 percent is classified as Class I milk.

The Class III shrinkage allowance to the processing plant receiving the milk from the cooperative would be 1.5 percent. This maintains a total of 2 percent Class III shrinkage allowance for such milk from producers in the receiving and processing operations.

The provisions adopted herein are designed to carry out the appropriate division of shrinkage whether the plant operator purchases the milk at farm weights and tests or at plant weights and tests. The provisions allow the plant operator up to 2 percent shrinkage in Class III if he buys the milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples. In this case, there is no shrinkage allowance for the cooperative association delivering the milk.

As provided herein, when a plant operator disposes of bulk milk by transfer to another plant, his shrinkage allowance would be reduced at the rate of 1.5 percent of the quantity transferred. Such a reduction would not apply, however, in the case of cream or skim milk transferred from the pool plant. This recognizes the fact that a handler normally experiences more shrinkage when he runs milk through a separator than when the milk is merely received and then transferred in whole form.

In the case of milk diverted from a pool plant to another plant, a shrinkage allowance in Class III of 0.5 percent would be provided the diverting handler if the operator of the plant to which the milk is diverted purchases such milk on the basis of weights and tests determined at the plant. If the milk is purchased at farm weights and tests, no shrinkage allowance would apply for the diverting handler. This is the same procedure applicable to cooperative bulk tank deliveries to pool plants. Similar handling is involved.

This kind of division of the 2 percent shrinkage allowance, both in the case of transfers from cooperatives to plants and for transfers between plants, has been found practical and has been well accepted in the markets where it now applies. Such division of the shrinkage allowance, therefore, should be included also in the Cedar Rapids-Iowa City, North Central Iowa, Des Moines, Fort Smith, and Austin-Waco orders that now treat shrinkage in a somewhat different manner.

As has been indicated, the uniform shrinkage provisions adopted would allow for certain typical variations of individual handler operations. Thus, the provisions should be adaptable to methods of milk handling now in use in all 32 markets. Testimony on the record did not provide any basis for retaining the many minor differences in shrinkage provisions that exist among these orders. In view of these conditions, it is appropriate that the orders have basically uniform shrinkage provisions.

The single exception to the maximum 2 percent shrinkage allowance will be in the Neosho Valley order that now allows up to 5 percent shrinkage in the surplus class for skim milk during April, May, and June. Although the record does not indicate why a need exists for such a substantially different allowance in one market, no change should be made in the allowance until the matter can be explored further.

A proposal in the hearing notice by two trade associations of processors would amend the orders to allow shrinkage on milk solids used in fortifying fluid milk products. While such an allowance now applicable under the North Texas order would be continued in that market, a basis for adoption in the other orders was not developed on the record. It would be important to have, for the other markets, evidence of current plant practices with respect to use of nonfat solids used for fortification and the effect of accounting and recordkeeping procedures on quantities reported as loss. Such data were not presented and thus there is no substantial basis on which to broaden the use of such provision.

Milk or milk products dumped or disposed of for animal feed are minor categories of disposition. Both cases involve quantities of milk products that for one reason or another are not salable for human consumption. Such dispositions are likely to occur in normal plant operations. Route returns that may be nonsalable because of dating regulations often may not be reprocessed economically into other products. Additives such as flavoring or nondairy solids may make reprocessing impractical. Also, in the processing of certain products culturing processes may break down, thereby making the milk unusable for further processing.

The cooperatives proposed that there be no change in the present classification of dumpage and animal feed other than to include such uses in the lowest class in those orders specifically recognizing such dispositions. Several milk dealers and two trade associations of processors also proposed that dumpage and animal feed dispositions be classified in the lowest use class. They requested, however, that these provisions be included in the several orders not now containing such provisions.

In the three-class system adopted in this decision, dumpage and animal feed dispositions are classified in the lowest use class. This conforms to the classification plans in those orders that provide specifically for such dispositions. Existing provisions recognize that such dispositions provide little or no return to the handler.

There are differences among the orders as to the type of products for which the lowest classification is permitted when disposed of for animal feed or dumped. While some of the orders apply such classification to all skim milk and butterfat so disposed of, others limit the application to skim milk in fluid milk products, and several orders provide such classification for cottage cheese and cottage cheese curd dumped or disposed of for animal feed.

The products covered by the dumpage and animal feed provisions should be limited to fluid milk products, fluid cream products, eggnog, yogurt and similar filled products. Because of their relatively limited shelf life, it is these products that are commonly found in route returns and for which handlers realize little, if any, monetary value. Such provisions also would apply to skim milk being used in the manufacture of cottage cheese but which must be dumped because of a failure in the culturing process.

Dumping, unlike other dispositions, involves no sales records that could aid in verification of a handler's records. Thus, advance notice to the market ad-

ministrator and opportunity for verification should be required. Also, in the case of animal feed disposition, a plant operator should maintain sufficient records to establish in every instance the quantities of skim milk and butterfat involved, and show a written receipt for every disposition.

The several changes herein adopted with respect to the classification of shrinkage, dumpage, and animal feed disposition will have relatively minor effect on producer returns or on handlers' costs. The quantities of milk classified in these categories are normally a very small percentage of an individual handler's total utilization. The uniform provisions adopted are similar to existing provisions found practical from experience in the majority of markets here involved. The standardization of terminology in the provisions described should result in provisions more easily understood.

Whether there may be some merit in a more general revision of the provisions for classifying shrinkage, dumpage, and animal feed disposition than is set forth herein cannot be decided on this record. If more extensive changes are in any way desirable, such matters should be considered on the basis of a thorough exploration of the issue at another hearing.

A handler proposal for a single "loss" classification including shrinkage, animal feed, and dumped products is not adopted. The proposal was not explored by interested parties on the record as to how it would affect handler and producer equities. These is no substantial basis on which to judge its merit and the proposal therefore is denied.

(f) *Allocation of receipts to utilization.* In adopting a revised classification plan under each of the 32 orders, conforming changes must be made in the provisions that prescribe how a handler's receipts from different sources shall be allocated to his utilization for the purpose of classifying producer milk. Of the 32 orders, all but seven provide for only two classes of utilization. Thus, changes in most of the orders are necessary to provide for the allocation of receipts to three classes of utilization rather than two classes. Also, all orders must be changed with respect to the allocation of beginning inventories, as previously described.

The adoption of three use classes requires a new consideration of how other source milk shall be allocated to a handler's utilization of milk. Under the present orders, other source milk is allocated in most cases to a handler's surplus uses to the extent possible, regardless of how it actually may have been used. The producers who are relied upon for a regular supply of milk for the local fluid market thus receive the highest possible classification of their milk. Depending on the supply conditions, milk from unregulated supply plants and other Federal order plants is permitted to share in varying degrees with local producer milk in the higher value of the handler's Class I sales.

In conjunction with the revised classification plan, however, handlers using certain types of other source milk (whether in the form received or in reconstituted form) in the processing of Class II products should be permitted to have such other source milk allocated directly to their Class II uses. Under the plan adopted herein, such other source milk to which direct allocation could apply would be limited to milk products (such as nonfat dry milk and condensed milk or skim milk) that are not fluid milk products or fluid cream products.

The national associations of fluid milk and ice cream processors proposed that if a three-class system is adopted handlers should have the option of having other source milk allocated to their Class II utilization rather than allocated to the extent possible to the lowest class. It was their position that the Class II price for producer milk should not be set at a level that is any higher than the cost to handlers of obtaining alternative supplies of milk or milk products for Class II use. These groups contended that with such pricing there is no justification for "down-allocating" to Class III any receipts of other source milk which actually may have been used in Class II.

Handlers indicated further that with optional allocation a handler could choose to use other source milk without the cost impact of down-allocation should the cost of such milk become less than the cost of producer milk for Class II use. Also, these groups stated that down-allocation of other source milk would imply an intent to provide undue protection of the Class II market for producers. They maintained that such protection is not justified, or apparently intended by producers in view of no producer proposal for a compensatory payment on other source milk used in Class II.

Cooperative associations, on the other hand, urged in connection with their proposal for three classes that producers have first claim on a handler's Class II use as well as on his Class I use.

In establishing a new intermediate price class, it is not intended that this outlet for producer milk necessarily be reserved for local producers. This new use class merely recognizes that some additional value attaches to producer milk used by regulated handlers in the Class II products. Pricing this milk at a level above the Class III price serves also to reduce the burden on the Class I price of attracting a supply of producer milk for the Class I market. It is not intended that producer returns be enhanced for the purpose of also attracting a full supply of producer milk for handlers' Class II uses. Accordingly, no obligation to the pool (commonly known as a compensatory payment) would be imposed under the revised classification plan on any other source milk which regulated handlers may use in Class II or on any Class II products that may be distributed in the market by nonpool plants, either directly on routes or through pool plants.

As long as the Class II price for producer milk remains in proper relationship with the cost of alternative supplies, it is not expected that this direct allocation of nonfluid other source milk to Class II will induce handlers to use other source milk in preference to producer milk to any greater extent than presently for processing Class II products. Under the adopted Class II price, producers would represent in most circumstances the most economical source of milk for Class II use.

No provision should be made for the direct allocation to a handler's Class II utilization of other source milk received in fluid form. Unlike the handling of nonfat dry milk, it would not be unusual for a handler to commingle in his plant any receipts of fluid other source milk with his receipts of producer milk. In this circumstance, it would not be possible to know just how much of the other source milk may have been used in the processing of a Class II product. The difficulty which a handler would have in demonstrating that he actually used fluid other source milk in a Class II product, and the administrative difficulty in verifying such claimed use, warrants the allocation of such milk in essentially the same manner as now provided by the orders.

In this connection, it should be noted that under the revised classification plan each order would provide for the specific allocation to a handler's Class II and Class III utilization of any receipts of bulk fluid milk products from an other order plant or an unregulated supply plant for which the handler requests a Class II or Class III classification. Such receipts would be allocated to the extent possible first to the handler's Class III utilization and then to his Class II utilization. This would be the case even if a Class II classification were requested by the handler.

An additional proposal concerning the "down-allocation" of other source milk was offered at the hearing by a handler operating distributing plants in several of the markets under consideration. The company's spokesman indicated that in one market the milk supply being furnished to it by the local producer cooperative was withheld by the cooperative in a particular month when the company refused to enter into a "full-supply" contract. The spokesman claimed that because the cooperative controlled about 85 percent of the producer milk on the market, the company was forced to acquire a supply of milk for the remainder of the month from another market. The spokesman indicated that although having purchased the outside milk for Class I use some of the milk was down-allocated to the plant's lowest utilization. This was because of the order provisions that now result in local producers receiving in large part first priority on a handler's Class I utilization. The handler proposed that if local producers refuse to supply a pool plant with sufficient milk for its Class I needs during the month, any supplies acquired from outside the market for Class I use not be down-allocated relative to receipts of producer milk.

The proposal should not be adopted. Any order provision intended to accommodate a handler in this one particular circumstance would be difficult to administer in an equitable manner. Han-

dlers are not required by an order to purchase milk from any particular source. Similarly, producers are not required to supply any particular handler. In negotiating for the purchase or sale of milk, either party may find the proposed terms unsatisfactory and thus may decide not to consummate the transaction. It would be difficult, if not impossible, for a market administrator to determine, however, which party actually decided not to enter into a purchase-sales agreement. Should a handler be able to acquire outside milk at a lesser cost than would be applicable to local producer milk, such handler would have an incentive to claim that local producers refused to supply him with milk when, in fact, this was not the case.

Such administrative difficulties could be overcome, of course, through the adoption of provisions that do not down-allocate receipts of outside milk from selected sources, or from any source, for Class I use. This would be a major departure, however, from the allocation procedure now used under the present orders. This procedure, which was based on comprehensive hearings for all Federal order markets, resulted from the "compensatory payment" decisions concerning the integration of other source milk into the regulatory plan of an order.[4] Such a change would be much broader in scope than was contemplated under the handler's proposal described above and should not be adopted.

In keeping with the goal of classifying milk uniformly under the 32 orders, certain changes should be made in the orders to effect a uniform application of the allocation provisions to multiple-plant handlers. Presently, the 32 orders differ as to how the allocation procedure shall be carried out for handlers who operate two or more pool plants regulated under the same order.

Each order should provide that for purposes of allocating a multiple-plant handler's receipts to his utilization, the operations at each of his pool plants shall be considered separately. As is the case now, however, those receipts of other source milk from unregulated supply plants and other Federal order plants eligible to share with producer milk in a handler's Class I utilization should be allocated on the basis of the handler's total plant system.

This application of the allocation provisions to a multiple-plant handler is now used under six of the 32 orders. Two other orders require that allocation be on an individual-plant basis unless there are receipts of other source milk at any one of the handler's pool plants to be allocated pro rata with producer milk to the plant's Class I utilization. In this case, all allocations of the handler's receipts to utilization are done on the basis of the handler's total system. The remaining orders provide that allocation be on a system basis in all cases.

[4] Official notice is taken of the Assistant Secretary's decisions issued on June 19, 1964 (29 F.R. 9002, 9110, and 9213) with respect to all milk orders then in effect.

Conditions in the individual markets do not require continuance of the several allocation methods now provided in the orders under consideration. Handlers are often subject at different times to the regulatory provisions of different orders. Applying the allocation provisions uniformly among all orders will reduce unnecessary regulatory differences being experienced by these handlers. There would be little, if any, change in a handler's total obligation under the order, or in producer returns, from applying the adopted allocation procedure in those orders not now providing for allocation on an individual-plant basis.

All the orders now provide that certain receipts of milk from unregulated supply plants and other Federal order plants shall share in varying degrees with local producer milk in the receiving handler's Class I utilization at all of his pool plants combined. This procedure, which resulted from the 1964 "compensatory payment" decisions referred to earlier, should be continued. To implement this procedure in those orders being changed from system allocation to individual-plant allocation, several additional allocation steps must be provided in such orders. These involve essentially the same computations now required under the orders for the North Texas, Central West Texas, Lubbock-Plainview, Rio Grande Valley, Northern Louisiana, and Des Moines markets where individual-plant allocation is used. Such provisions are revised, however, to incorporate three classes of utilization rather than two classes.

The additional allocation steps establish a procedure whereby the milk from unregulated supply plants and other order plants will continue to be classified on the basis of the handler's total system, but will be assigned to classes at the pool plant of actual receipt. Under this procedure, the situation may arise where there is not enough utilization in a specific class at the plant of actual receipt to which such other source milk must be assigned (as determined from receipts and utilization of his entire system). In this case, an accounting technique is used for increasing the utilization in such class at the plant of actual receipt and making a corresponding reduction in the same class at one or more of his other pool plants in his system. This technique does not result, however, in changing the amount of milk to be accounted for at each plant, or the classification of milk within the handler's entire system.

(g) *Obligations relative to other source milk.* Each of the orders under consideration that provide for market-wide pooling should be revised to the extent necessary to remove the possibility of a handler being charged under the order at the Class I price for milk that already has been classified and priced as Class I milk under some Federal order. Certain of these orders already have been revised to remove any "double charge" on Class I milk. The order language previously adopted for this purpose should be made uniform, however, and should be included in the remaining orders not now containing such provisions.

No changes in this respect are necessary under the Memphis, Fort Smith, Austin-Waco, and North Central Iowa orders. These orders employ individual-handler pooling and do not provide for any handler obligation on other source milk.

A "double charge" on Class I milk received at a pool plant from an unregulated nonpool plant could result in the following manner. Producer milk could be transferred in bulk from a pool plant under the Wichita order, for example, to an unregulated nonpool plant and be assigned to the nonpool plant's Class I utilization. In determining his pool obligation, the pool plant operator would be charged for this Class I utilization of milk at the Class I price. During the same month, bulk milk could be transferred from the nonpool plant to a pool plant under the Kansas City order and be allocated to such pool plant's Class I utilization. In this case, the operator of the pool plant would be charged under the Kansas City order the difference between the order's Class I price and weighted average price for this receipt of "other source" Class I milk. Thus, to the extent of the Class I milk that was moved to the nonpool plant from the Wichita market as Class I milk, the Class I other source milk received at the Kansas City pool plant from the nonpool plant is, in effect, priced twice as Class I milk under the Federal order system.

More and more, plants are tending to specialize in the processing of certain products, or in the packaging of products in particular types of containers. It is not uncommon for milk to be transferred from a pool plant to an unregulated nonpool plant for special processing and the finished products to be moved back into the regulated market. When the milk is initially priced at the Class I price, the market price structure is in no way undermined if this milk, or its equivalent, is disposed of by the nonpool plant in the regulated market.

The orders therefore should provide that the operator of the Kansas City plant, in this example, will have no obligation to the pool on such other source Class I milk. This is achieved through a revision of the allocation provisions and the procedure for computing the pool obligation of a pool plant operator. Receipts of packaged fluid milk products at a pool plant from an unregulated supply plant would be allocated to the pool plant's Class I utilization to the extent that an equivalent amount of skim milk or butterfat disposed of to the unregulated plant by handlers fully regulated under any Federal order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order. This allocation would be made prior to any other allocation of receipts to the plant's Class I utilization, and no order obligation would apply to the milk so allocated to Class I. In the case of fluid milk products received from an unregulated supply plant in bulk form, the provisions setting forth a han-

dler's pool obligation would specify that no payment would apply to any of such milk allocated to Class I if, as just described for packaged milk, an equivalent amount of milk received at the unregulated plant had been priced as Class I milk under some order.

In this same connection, the provisions prescribing the obligation of a partially regulated distributing plant should be changed in each marketwide pool order. When such plant's obligation is computed as though it were a pool plant, proper recognition must be given to any transfers from the plant to a regulated plant that are considered to already have been priced as Class I milk under some Federal order. Also, in computing such plant's pool obligation on route sales in a Federal order marketing area, recognition should be given to any receipt of milk at such plant from another unregulated plant if an equivalent amount of milk received at the latter plant already has been priced as Class I milk under an order.

Each order now imposes a handler assessment for administering the order on all other source Class I milk except that received in fluid form from an other order plant. This may include milk that already has been priced as Class I milk under some Federal order as described above. With the removal of a "double" Class I charge on such milk, each order should be changed to likewise remove any assessment on such milk for administrative expenses. It is presumed that such milk was subject to a similar charge under the order that initially priced the milk.

The marketwide pool orders should be changed also with respect to the application of location adjustments to other source Class I milk. As just described, each of the orders provides that a pool plant operator's obligation to the producer-settlement fund shall include a payment for fluid milk products received from an unregulated supply plant if they are allocated to Class I. The handler's payment is determined by charging him at the Class I price for the Class I other source milk and giving him a credit on the milk at the weighted average price (or uniform price in the case of those orders that do not provide for any type of seasonal production incentive plan). Both the Class I and weighted average prices are adjusted for the location of the unregulated supply plant. The adjustment of the weighted average price, though, is so limited as to be not less than the lowest class price. No such limitation is applied currently under most of the 32 orders to the Class I price adjustment.

Providing that any adjusted Class I price applicable to other source milk be not less than the Class III price is appropriate under each order. Otherwise, under certain conditions a handler could receive payment from the producer-settlement fund on Class I milk obtained from an unregulated supply plant. Such payment could result when the location differential for the distant plant is greater than the difference between the Class I and Class III prices. In this circumstance, producers under the order, in effect, would be providing the handler with a credit that reduces his cost for the distant milk below its value for manufacturing use at the point of purchase. From the standpoint of marketing efficiency, the handler should not be provided an incentive, which would be at the expense of local producers, to import such distant milk into the local market.

A similar situation now exists with respect to the obligation of the operator of a partially regulated distributing plant or an other order plant. In certain cases, the handler's obligation includes a payment to the producer-settlement fund at the difference between the Class I price applicable at his plant and either the weighted average price or the Class III price. For the same reasons, each order should provide, in computing the obligation of such a handler also, that the Class I price, as adjusted for location, shall not be less than the Class III price.

(h) *Reports.* The proposed changes in the classification of milk are not expected to require any major change in the amount of information to be submitted by handlers in their monthly reports of receipts and utilization. The reporting provisions of each order must be changed, however, to reflect the new categories of information that each market administrator will need in administering an order. These changes stem largely from the proposed reclassification of cream and the revised accounting methods necessary for implementing a three-class classification scheme.

In revising the reporting provisions of each order, such provisions should be made uniform to the extent possible. Essentially the same information is now required to be reported under each order, basically for the purposes of determining the classification of the milk and its classified value. There is considerable variation among these orders, however, in the manner in which the provisions on reports are expressed.

As proposed herein, the reporting provisions would be stated in some orders in slightly less detail than is now the case. The market administrator would have, nevertheless, no less authority than at present to obtain through handler reports, in the detail and on forms prescribed by the market administrator, any information the latter believes is necessary for administration of the order.

5. *Changing the butterfat differentials.* A single butterfat differential should apply under each order for adjusting prices to the actual butterfat content of the milk being priced. This differential should be the Chicago butter price multiplied by 0.115, rounded to the nearest one-tenth cent.

All 32 orders provide butterfat differentials for adjusting class prices and uniform prices for butterfat content. With two exceptions, each order bases the class butterfat differentials on the Chicago butter price, which would be continued under the revised orders. The Chicago butter price is the simple average of the wholesale selling prices (using the midpoint of any price range as one price) per pound of Grade A (92-score) bulk butter at Chicago as reported for the month by the U.S. Department of Agriculture. Under the Minneapolis-St. Paul and Southeastern Minnesota-Northern Iowa orders, the Class II butterfat differential is based on the price of Grade AA (93-score) butter at New York City.

The handler butterfat differentials for each class are now computed by multiplying the butter price by a specified factor. In the case of the Class I butterfat differential, the factor is 0.120 under 19 orders and 0.125 under 11 orders. One order uses a factor of 0.130 and another a factor of 0.135.

The factor most commonly used in computing the butterfat differentials applicable to the surplus prices is 0.115, as prescribed by 18 orders. Eight orders use 0.110, while the factors 0.120 and 0.108 are used under two other orders. Four orders use a factor of 0.110 during the heavy production months and 0.115 during the remainder of the year.

The butterfat differential used in adjusting the uniform price to producers under 22 of the orders is the average of the butterfat differentials for each class, weighted by the proportion of producer milk in each class. Under six other orders, the butterfat differential to producers is determined by multiplying the Chicago butter price by 0.120. Two other orders use a factor of 0.110 under a similar computation, while another provides that this differential be computed by adding 4 cents to the Chicago butter price and multiplying the sum by 0.1. Under the Memphis order, the producer butterfat differential is determined from a fixed schedule of rates in the order which are related to the Chicago butter price, i.e., for each 5-cent change in the butter price, the butterfat differential changes one-half cent per point of butterfat.

Cooperative associations proposed that all class prices and uniform prices be subject to adjustment by a single butterfat differential based on the Chicago butter price times a factor of 0.115. One handler proposed that the Class II and Class III butterfat differentials be based on the Chicago butter price times 0.110. Handlers in general opposed any change in the present Class I butterfat differentials.

Lowering the Class I butterfat differential factor to 0.115 will accommodate producers' request for a readjustment of the values of skim milk and butterfat in Class I milk at a time of declining use of butterfat in fluid milk products. In 1960, the average butterfat test of fluid milk products (including cream items) in 63 Federal order markets was 3.76 percent. In 1970, the average butterfat test for such products in 58 markets was 3.26 percent.

Comparable data for the 32 subject markets as they are presently constituted are not available. On the basis of information available for much of the area now regulated by these orders, however, there is every indication that the use of

butterfat in Class I in these markets is following the national trend.[8]

The impact of this change on a handler's average cost of producer butterfat for Class I use is dependent, of course, upon the average butterfat test of his Class I products and the butterfat differential now applicable to him. Thus, handlers in the 32 markets will be affected differently from lowering the Class I butterfat differential. An analysis of 1970 data for 30 of the 32 markets will serve to illustrate the general change in handlers' costs under the revised classification plan. Data for the Fort Smith and Austin-Waco markets are not available.

It is estimated that in 18 of the 19 markets now using a Class I butterfat differential factor of 0.120 the average butterfat test of Class I products distributed by handlers (excluding cream and lowfat items) would have ranged in 1970 from 3.55 percent to 2.53 percent. Using the average test for these markets of 2.98 percent, the Class I price at test would have been increased 1.8 cents per hundredweight. For 10 of the 11 markets now using a Class I butterfat differential factor of 0.125, the average test of Class I milk would have ranged from 3.25 percent to 2.81 percent. Based on an average test of 3.01 percent, using a factor of 0.115 in these markets would have increased the Class I price at test by 3.4 cents. The price increases would have been slightly greater in the Duluth-Superior and central Arizona markets, where factors of 0.130 and 0.135, respectively, are used. Based on estimated Class I butterfat tests of 2.73 percent and 3.10 percent, the Class I price at test would have been increased 8.0 cents per hundredweight in the Duluth-Superior market and 5.6 cents in the central Arizona market.

Handlers opposed any change in the Class I butterfat differentials on the basis that the relationship of skim milk and butterfat values had already been altered by a change on April 1, 1971, in the purchase prices for dairy products under the Department's price support program. They pointed out that this change, as reflected in order prices, increased handlers' cost of skim milk about 10 cents per hundredweight. Handlers argued that in view of this any further increase in the value of skim milk should be delayed until there has been an opportunity to observe the market response to the effects of the price support change.

There is no evidence to suggest that Class I sales of skim milk and lowfat products were affected adversely by the price support action. Data for 58 Federal order markets indicate that average daily sales of these products in 1971 increased 2.1 million pounds over such sales in 1970. Monthly data show no drop in sales following the support price change in the early part of 1971. Adopting a lower Class I butterfat differential at this time gives recognition to the lower market value now associated with butterfat in Class I products.

Using a single factor of 0.115 for computing Class II and Class III butterfat differentials will result in a uniform adjustment of class prices for butterfat content among the markets under consideration. Continuation of the several butterfat differential factors now in use would offset to some extent the benefits to be gained through the adoption of a uniform classification plan.

A handler proposed that the butterfat differential factor for adjusting surplus prices be 0.110 rather than 0.115 as proposed by cooperatives. Proponent indicated that in disposing of surplus cream handlers usually are not able to recover their cost of such cream under the order. A Class II-Class III butterfat differential factor of 0.110, it was argued, would provide handlers with some price relief in this circumstance.

The record does not indicate that the adoption of 0.115 as the butterfat differential factor for pricing surplus milk will hinder the removal of surplus butterfat from the fluid market. Of the 32 orders, 22 now use a factor of 0.115, and one uses a factor of 0.120, for pricing surplus milk. The handler proposing the 0.110 factor was the only opponent of the 0.115 factor proposed by cooperatives. The great majority of residual butterfat is disposed of by the cooperatives rather than handlers. It must be concluded that the adoption of the handler's proposal under present marketing conditions would return to producers in most cases less than the obtainable market value for butterfat not needed for Class I purposes.

As indicated, the butterfat differential to producers under 22 of the 32 orders reflects the weighted value of butterfat in the class uses. Inasmuch as producers favor this method of reflecting skim milk and butterfat values in their pay prices, this pricing arrangement should be extended to the other 10 orders. Since the same butterfat differential would be used in adjusting each of the class prices, there is no actual need, of course, for any provision in the order for weighting the values of butterfat in the three classes in determining the producer butterfat differential.

With the use of a single butterfat differential for adjusting all prices under the order, it is necessary that each order provide only for a producer butterfat differential. No handler butterfat differentials need be set forth as such in the order, nor is there any need for pooling butterfat values in each class. All producer differential butterfat would be priced to all handlers at the same level regardless of the class in which used. The proposed revised orders attached hereto have been drafted accordingly.

Under the new pricing arrangement, the single butterfat differential for the current month should be based upon butter prices for such month and should be announced by the fifth day of the following month. This represents a change only for the pricing of Class I milk. The Class I butterfat differentials are now based on butter prices prevailing during the preceding month and are announced by the fifth day of the current month. With the use of a single butterfat differential factor in adjusting all milk prices, as adopted herein, there appears to be no need for announcing more than one butterfat differential, or for doing so before the end of the month in which it applies. The average butter price changes very little from month to month, and changes that do occur result in relatively limited changes in the butterfat differential. Each change in the price of butter is readily seen by following the daily quotations for butter. In the absence of regulation, such information would be the best available for determining trends in butter prices and should be adequate for this purpose under regulation.

It is recognized that the basic formula price of these orders is determined by adjusting the average Minnesota-Wisconsin price at test to a 3.5-percent butterfat basis by using a factor of 0.120 times the average Chicago butter price. The appropriateness of such factor for this purpose was not considered at the hearing and no consideration is given in this decision to changing this factor for such purpose. Moreover, since this method of determining the basic formula price is now used under all Federal milk orders throughout the country, it would appear that any change in this butterfat differential factor should be considered simultaneously for all orders.

6. *Advance announcement of prices for surplus milk.* The proposal by handlers to announce order prices for surplus milk at the beginning of the month rather than at the end of the month during which the prices apply should not be adopted.

Under the present orders, the prices for surplus milk are announced by the fifth day of each month. Such prices apply to producer milk delivered to handlers during the preceding month.

The national associations of fluid milk and ice cream processors proposed that the class prices to be applicable in a particular month to surplus milk be announced by the fifth day of such month. Handlers stated that under the present announcement procedure they are often disadvantaged by not knowing the costs of producer milk for manufacturing use until after the end of the month in which the milk is processed. They claimed that when there is a significant increase in the order price, the delayed notice of the increase prevents them from making corresponding adjustments in their resale prices on a timely basis. Proponents' interest in advance pricing related essentially to the prices that would be applicable to cottage cheese, cream products, yogurt and frozen desserts, the principal Class II products processed by such handlers.

For the regulated handler processing producer milk into butter, nonfat dry milk and cheddar cheese, however, advance announcement of the applicable class price could place him at a competitive disadvantage on his sales of these manufactured products. As indicated

[8] Official notice is taken of the annual summaries for 1960 through 1971 of Federal Milk Order Market Statistics which were issued by the Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C.

earlier, the surplus prices under the revised classification plan generally would be based on the prices paid for manufacturing grade milk in Minnesota and Wisconsin. These prices are closely related to the market values of cheddar cheese, nonfat dry milk, and butter, the principal uses for such milk in the month of delivery of the raw milk. These product prices are established on a regular basis in a market that is national in scope. The manufacturers of ungraded milk are fully aware of the movements of these product prices, which are published weekly, and can adjust their pay prices for milk in response to changes in the prices for the finished products. Regulated handlers who are processing these particular products must compete in the same national market in which the processors of manufacturing grade milk are competing and the same product price information is available to them.

In most of the markets under consideration, substantial quantities of milk are disposed of by regulated handlers in the form of butter, nonfat dry milk, or cheese. In 1970 over 1 billion pounds of milk, or 88 percent of the market's total Class II use, were so disposed of by handlers in the Minneapolis-St. Paul market. In the Minnesota-North Dakota, Southeastern Minnesota-Northern Iowa, Duluth-Superior, Cedar Rapids-Iowa City, Eastern South Dakota, Oklahoma Metropolitan and North Central Iowa markets, over 80 percent of each market's total Class II milk was used that year in manufacturing these products. Although lesser quantities of milk were used in such products in the other markets, only in four markets (Memphis, Fort Smith, Central West Texas and Rio Grande Valley) did such uses represent less than 20 percent of the total Class II use for each market. Thus, handlers in most of the 32 markets have a very definite interest in the relationship of the applicable class price with prices being paid currently for manufacturing grade milk. Accordingly, the prices paid by regulated handlers for Class III milk should correspond very closely with the pay prices during the month of delivery for manufacturing grade milk if these handlers are to be competitive in the sale of the principal surplus products.

The same considerations are involved in the case of an advance announcement of prices for milk used in the proposed Class II products. The influence of the manufacturing milk price level on the competitive relationship of producer milk for Class II uses is similar to that for producer milk used in the proposed Class III products. Therefore, the prices for Class II milk should be announced on the same basis as the price for Class III milk.

In connection with the announcement of surplus prices, a comment should be made concerning the transition from the present pricing provisions to the new ones adopted herein. It is intended that the present surplus prices apply to producer milk delivered to handlers during the last month under the present classification and pricing scheme. Clarification of this point is pertinent since such prices would be announced following the effective date of the new pricing provisions.

7. *Treatment of filled milk under the Minneapolis-St. Paul and Southeastern Minnesota-Northern Iowa orders.* The Minneapolis-St. Paul and Southeastern Minnesota-Northern Iowa orders should be changed to provide that the skim milk ingredient of "filled milk" shall be classified and priced as Class I milk.

The provisions provided herein are substantially those which were proposed for consideration at the hearing by a cooperative association operating in these markets.

In 1968, proposals to classify and price the skim milk component of filled milk were considered for most orders at a hearing held in Memphis, Tenn. The decision resulting from the hearing classified the skim milk component of filled milk in the same way as the skim milk component of natural milk. It provided a means of equating the cost of skim milk in filled milk if it originates from sources other than producer milk with the cost if derived from producer milk.

At the time of the 1968 hearing, the Southeastern Minnesota-Northern Iowa order had not been issued, and the Minneapolis-St. Paul order could not be amended in this respect because of a marketing area expansion to which the filled milk hearing did not apply. As a result, these orders do not contain the uniform provisions dealing with filled milk provided in all other Federal milk orders.

Filled milk is a combination of skim milk and vegetable fat or oil in about the same proportions as the skim milk and milk fat in whole milk. Well over 90 percent of the product is skim milk. In most filled milk, the skim milk portion is fresh fluid skim milk separated from whole milk. Some filled milk contains reconstituted fluid skim milk prepared from a concentrated product such as nonfat dry milk. Whether made from vegetable fat and fresh or reconstituted skim milk or any combination of the two, filled milk resembles whole milk in appearance.

Regulated handlers disposing of filled milk make a substantial savings in cost by substituting vegetable fat or oil for butterfat. This is the main incentive for the marketing of filled milk. While the difference in cost between vegetable fat and butterfat is not an issue at this hearing, it is relevant to the extent that it explains the profit motivation for marketing the product relative to the marketing of natural milk.

At the present time, no filled milk is distributed in the Minneapolis-St. Paul and Southeastern Minnesota-Northern Iowa marketing areas. In those regulated markets where filled milk is distributed, it moves in the same channels as whole milk. It is distributed by the same handlers in the course of their regular business through the same outlets for natural milk and in the same types of containers.

Filled milk, if disposed of in either the Minneapolis-St. Paul or the Southeastern Minnesota-Northern Iowa marketing area, would directly burden, obstruct, or affect interstate commerce in milk and milk products. It previously has been determined (at the time of the promulgation of each of these orders) that all milk marketed in each marketing area is in the current of interstate commerce or directly burdens, obstructs, or affects interstate commerce in milk and milk products.

Filled milk is in content substantially a product of milk and competes for the same sales outlets as milk. It follows, therefore, that the marketing of the milk ingredients in filled milk in either of the two markets would burden, obstruct, or affect interstate commerce in milk and milk products. This would be equally true whether the marketing of filled milk were by a fully regulated plant or by a plant not fully regulated because both would compete for similar outlets in the market.

Also, manufactured milk products are sometimes used in the production of filled milk. Manufactured milk products move in interstate commerce and compete in the national market, regardless of where the milk is produced. Therefore, manufactured milk products, if used in the production of filled milk for disposition in either the Minneapolis-St. Paul or Southeastern Minnesota-Northern Iowa market, likewise would burden, obstruct, or affect interstate commerce in milk and its products.

The classification of the dairy ingredients of filled milk is a proper consideration derived from the Agricultural Marketing Agreement Act. As stated in the decision resulting from the filled milk hearing in Memphis, Tenn., the "specific language of the Act with respect to classification is that each order shall contain terms ** * * classifying milk in accordance with the form in which or the purpose for which it is used * * *". In applying the language of the Act we here consider the form and purpose of use for both filled milk and the milk ingredient content of the filled milk.

"The form of filled milk and the purpose for which it is used are the same as the form and purpose of use of whole milk. Filled milk, just as whole milk, is disposed of in fluid form. It is marketed by handlers in the same types of packages and in the same trade channels as the whole milk they market, and is mainly intended as a beverage substitute for milk.

"Similarly, the fluid skim milk content of the filled milk is in the same form as skim milk in whole milk and serves the same purpose, providing in each case the main body of the product thereby making it a milk beverage. The addition of the nonmilk ingredients, principally vegetable fat or oil and stabilizers, does not alter the basis for Class I classification. The addition of nonmilk ingredients in fluid milk products is not a new development. The addition of vegetable fat does not involve an essentially different consideration from that for other Class I fluid milk products to which a flavoring ingredient, such as chocolate (which also contains nonmilk fat) has been added.

"For purpose of illustration, a product within the 'fluid milk product' category containing a nonmilk additive is chocolate milk. The additive is not considered as changing the form of this product so that it is no longer a fluid milk product. For the purposes of classification, the flavoring material has never been regarded as significant in determining the form of the product or as a basis for altering its classification.

"The same reasoning applies in the case of filled milk—that the additives do not change significantly the form or the purpose of use and therefore do not constitute a basis for classification other than in Class I.

"The product 'filled milk' therefore should be classified, for the purpose of pricing under the orders, in the same manner as whole milk. As in the case of other fluid milk products containing some nonmilk ingredients, the classification would apply only to the milk ingredients in the product."

No opposition to the filled milk proposal was expressed at the hearing or in briefs submitted by interested parties.

Based on the testimony of proponent, which related specifically to the Minneapolis-St. Paul and Southeastern Minnesota-Northern Iowa orders, it is found that the above findings from the Memphis decision are equally applicable to this proceeding. Accordingly, they serve as the basis for concluding that the milk ingredients of filled milk should be classified and priced under the two orders as Class I milk.

Proponent testified also that filled milk may be made by combining reconstituted skim milk with vegetable fat and other minor ingredients. Reconstituted skim milk commonly is made from nonfat dry milk to which water is added to return it essentially to a form and consistency similar to fresh skim milk. Its potential as a disruptive influence on the market for producer milk is substantial, however, since the disposition of any Class I product that has been priced at the surplus price level undermines the classified pricing system.

As was found in the filled milk decision referred to earlier, filled milk made from reconstituted skim milk is, from a marketing standpoint, essentially similar to filled milk made from fresh skim milk. It is a competitor of whole milk at the consumer level. Therefore, reconstituted skim milk in filled milk, as in other fluid milk products, should be classified and priced on the same basis as all other fluid milk products to achieve uniformity in the pricing of milk for similar uses.

Federal milk orders, including the Minneapolis-St. Paul and Southeastern Minnesota-Northern Iowa orders, have contained for some time specific provisions dealing with the disposition by a regulated handler of other fluid milk products reconstituted from nonfluid milk products. The issue of proper classification and charge for such use of nonfluid milk products to produce products for Class I disposition was dealt with for most orders in the compensatory payment decisions referred to earlier in this decision. The findings and conclusions that relate to the reconstitution of milk appeared at 29 F.R. 9010. The regulatory treatment of reconstituted products that is described in the compensatory payment decisions and reiterated in the later filled milk decision is appropriately applicable to any reconstituted skim milk used in filled milk that may be disposed of in the Minneapolis-St. Paul and Southeastern Minnesota-Northern Iowa marketing areas.

It should be noted that these two orders now provide that a producer-handler would lose his status as such and become a fully regulated handler if he disposes of fluid milk products made from reconstituted skim milk. Since the fluid milk product definition would include filled milk under the amendments adopted herein, loss of producer-handler status would result also from the sale of reconstituted filled milk.

A definition of filled milk should be provided in the two orders to meet the specific needs of order regulation, and for such purpose only. This definition, which would be identical to the filled milk definition in all other orders, should be as follows:

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

The term "filled milk" is not intended to include skim milk marketed in a form or for a purpose specifically excluded from the fluid milk product definition of either order. For example, evaporated milk is a use of skim milk and butterfat not treated as a fluid milk product in either order. If a product containing skim milk and any amount of vegetable fat were marketed in the same form and manner as evaporated milk, it would be excluded from the term "filled milk".

The regulatory treatment of filled milk adopted herein requires numerous conforming changes throughout the order. Accordingly, all the conforming changes found necessary on the basis of the Memphis hearing to implement the filled milk amendments are incorporated herein wherever applicable.

8. *A uniform "equivalent price" provision.* Each of the 32 orders included in this proceeding should be amended to the extent necessary to provide identical language for determining an equivalent price, or price constituent, when a price or price constituent is not available as prescribed by the order.

At present, all of the 32 orders except the Minnesota-North Dakota order provide for computing an equivalent price as needed. Such provisions are not identical, however, among the orders. A Dairy Division proposal for a uniform equivalent price provision under each order was supported by a witness for the National Milk Producers Federation.

An equivalent price provision is necessary in each of the orders to provide a price, or price constituent, in cases where published prices, indexes, quotations, or other pricing constituents as prescribed by the order are not available. It insures that basic formula prices, class prices and butterfat differentials can be computed, as prescribed, in emergency situations without interruption.

All the orders now rely on butter price quotations for computing butterfat differentials. All rely on the Minnesota-Wisconsin price series for computing the basic formula price and Class I prices. As proposed herein, this price series would be used also in establishing Class II and Class III prices under each order.

Under unusual circumstances, these published prices and price constituents might not be available for use in computing order prices. If there were insufficient trading during the month in butter, for example, or if the specific butter price quotations were discontinued, the prescribed butterfat differentials could not be computed without an equivalent price provision. By providing for the determination of an equivalent price as needed, the Department is in a position to draw on comprehensive resource data to assure that the computation of the basic formula price, the class prices, or the butterfat differentials is not interrupted by the contingencies cited.

For these reasons, it is concluded that the Minnesota-North Dakota order should provide for the determination of an equivalent price in the same manner as the other orders included in this proceeding.

In providing for a determination of equivalent price, the same objective is sought for each order. It is appropriate, therefore, to provide for identical provisions in each order. Then, if a determination had to be made for more than one order simultaneously, there would be no question as to the applicability of the determination to each order.

Accordingly, the equivalent price provision in each order should be stated as follows:

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

A corollary change should be made in the Class I price provisions of the Neosho Valley order. This order provides that the Class I price shall be based in part on the Class I price "under Part 1067 of this chapter regulating the handling of milk in the Ozarks marketing area." At the time the Ozarks order was merged with the St. Louis order, a determination of equivalent price was issued for the Neosho Valley order (33 F.R. 15107) which stated in part that:

For the purpose of computing the Neosho Valley Class I price, the Class I price announced for Zone 1 under the St. Louis-Ozarks milk order (Part 1062) will be equivalent to the price specified in § 1071.51(a)(2) of the Neosho Valley order and should be used in lieu thereof in computation of the Class I price of the Neosho Valley order until such time as the Neosho Valley order may be amended.

This determination of equivalent price, which was issued in October 1968, is still in effect. This proceeding affords an opportunity to amend the Neosho Valley order as prescribed in the determination. Thus, the order language quoted earlier should be revised to read "under Part 1062 of this chapter regulating the handling of milk in the St. Louis-Ozarks marketing area."

RULINGS ON PROPOSED FINDINGS AND CONCLUSIONS

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

GENERAL FINDINGS

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

The following findings are hereby made with respect to each of the aforesaid tentative marketing agreements and orders:

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the tentative marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

RECOMMENDED MARKETING AGREEMENT AND ORDER AMENDING THE ORDER

The recommended marketing agreements are not included in this decision because the regulatory provisions thereof would be the same as those contained in the orders, as hereby proposed to be amended. The following order amending the orders, as amended, regulating the handling of milk in the aforesaid marketing areas is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out. It is the same as the order amending the orders set forth in the aforementioned recommended decision issued by the Deputy Administrator, Regulatory Programs, on August 28, 1972, except for modifications in the following sections of each order. The modifications noted do not include those that have been made in each order to reflect the new Federal Register style for "references" within a section of the order.

PART 1060—MILK IN MINNESOTA-NORTH DAKOTA MARKETING AREA

§§ 1060.7, 1060.12(b)(2), 1060.14, 1060.15(a)(2), 1060.16, 1060.30(a)(3), 1060.40, 1060.41(b)(2), and (3), and (c), 1060.42(d)(2)(vi), 1060.44(a), 1060.50(b), 1060.76(b)(2)(i) and (ii).

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

§§ 1061.7, 1061.12(b)(2), 1061.14, 1061.15(a)(2), 1061.16, 1061.30(a)(3), 1061.40, 1061.41(b)(2), and (3), and (c), 1061.42(d)(2)(vi), 1061.44(a), 1061.50(b), 1061.76(b)(2)(i) and (ii).

PART 1063—MILK IN QUAD CITIES-DUBUQUE MARKETING AREA

§§ 1063.7, 1063.12(b)(2), 1063.14, 1063.15(a)(2), 1063.16, 1063.30(a)(3), 1063.40, 1063.41(b)(3) and (c), 1063.42(d)(2)(vi), 1063.44(a), 1063.50(b), 1063.76(b)(2)(i) and (ii).

PART 1064—MILK IN GREATER KANSAS CITY MARKETING AREA

The Index and §§ 1064.7, 1064.12(b)(2), 1064.14, 1064.15(a)(2), 1064.16, 1064.30(a)(3), 1064.40, 1064.41(b)(2), and (3), and (c), 1064.42(d)(2)(vi), 1064.44(a), 1064.50(b), 1064.61, 1064.71(a)(2)(ii), 1064.73(a) and (d)(1), 1064.75(b), 1064.76(a)(4) and (b)(2)(i) and (ii), and new §§ 1064.110 through 1064.122 are added.

PART 1065—MILK IN NEBRASKA-WESTERN IOWA MARKETING AREA

The Index and §§ 1065.5, 1065.6, 1065.7, 1065.10, 1065.12(b), 1065.14, 1065.15(a)(2), 1065.16, 1065.30(a)(3), 1065.40, 1065.41(b)(2), and (3), and (c), 1065.42(d)(2)(vi), 1065.44(a), 1065.50(b), 1065.60(d), 1065.61, 1065.62, 1065.71(a)(2), 1065.73 preamble and (e)(3), a new § 1065.73a is added, 1065.74, 1065.75, 1065.76(a)(4) and (b)(2)(i) and (ii), 1065.85(a), 1065.98(a), and new §§ 1065.90 through 1065.98 and 1065.110 through 1065.122 are added.

PART 1068—MILK IN MINNEAPOLIS-ST. PAUL, MINNESOTA, MARKETING AREA

§§ 1068.12(b)(2), 1068.14, 1068.15(a)(2), 1068.16, 1068.30(a)(3), 1068.40, 1068.41(b)(2), and (3), and (c), 1068.42(d)(2)(vi), 1068.44(a), 1068.50(b), 1068.76(b)(2)(i) and (ii).

PART 1069—MILK IN DULUTH-SUPERIOR MARKETING AREA

§§ 1069.7, 1069.12(b)(2), 1069.14, 1069.15(a)(2), 1069.16, 1069.30(a)(3), 1069.40, 1069.41(b)(2), and (3), and (c), 1069.42(d)(2)(vi), 1069.44(a), 1069.50(b), 1069.76(b)(2)(i) and (ii).

PART 1070—MILK IN CEDAR RAPIDS-IOWA CITY MARKETING AREA

§§ 1070.7, 1070.12(b)(2), 1070.14, 1070.15(a)(2), 1070.16, 1070.30(a)(3), 1070.40, 1070.41(b)(3) and (c), 1070.42(d)(2)(vi), 1070.44(a), 1070.50(b), 1070.76(b)(2)(i) and (ii).

PART 1076—MILK IN EASTERN SOUTH DAKOTA MARKETING AREA

§§ 1076.7, 1076.12(b)(2), 1076.14, 1076.15(a)(2), 1076.16, 1076.30(a)(3), 1076.40, 1076.41(b)(2), and (3), and (c), 1076.42(d)(2)(vi), 1076.44(a), 1076.50(b), 1076.76(b)(2)(i) and (ii).

PART 1078—MILK IN NORTH CENTRAL IOWA MARKETING AREA

§§ 1078.7, 1078.12(b)(2), 1078.14, 1078.15(a)(2), 1078.16, 1078.30(a)(3), 1078.40, 1078.41(b)(2), and (3), and (c), 1078.42(d)(2)(vi), 1078.44(a), 1078.50(b).

PART 1079—MILK IN DES MOINES, IOWA, MARKETING AREA

§§ 1079.7, 1079.12(b)(2), 1079.14, 1079.15(a)(2), 1079.16, 1079.30(a)(3), 1079.40, 1079.41(b)(3) and (c), 1079.42(d)(2)(vi), 1079.44(a), 1079.50(b), 1079.76(b)(2), (i), and (ii).

PART 1060—MILK IN MINNESOTA-NORTH DAKOTA MARKETING AREA

Subpart—Order Regulating Handling

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AUTHORITY: The provisions of this Part 1060 issued under secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

GENERAL PROVISIONS

§ 1060.1 General provisions.

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

DEFINITIONS

§ 1060.2 Minnesota-North Dakota marketing area.

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

MINNESOTA

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

NORTH DAKOTA

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

SOUTH DAKOTA

Grant.	Roberts.
Marshall.	

§ 1060.3 Route disposition.

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

§ 1060.4 Plant.

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

§ 1060.5 Distributing plant.

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

§ 1060.6 Supply plant.

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

§ 1060.7 Pool plant.

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

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

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

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

(i) March through June, 20 percent;

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

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

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

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

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

(3) A supply plant from which the Secretary determines a greater proportion of its Grade A receipts, except filled milk, is shipped during the month to plants which are regulated by another order 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 diverted from a pool plant to an other order plant if the other order designates such person as a producer under that order with respect to such milk.

§ 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), pool plants, or inventory at the beginning of the month;

(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 (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.

§ 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;

(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) 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

(v) 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;

(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 milk 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 paragraphs (a)(2), (7)(v), and (8)(i) of this section which are in excess of the pounds of skim milk determined pursuant to paragraphs (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 shall be increased (increasing Class III first to the extent permitted by the handler's total Class III utilization at his other pool plants) by an amount equal to such 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 other pool plants of the handler shall be adjusted to the extent possible in the reverse direction by a like amount. Such adjustment shall be made at the other plants in sequence beginning with the plant having the least minus location adjustment:

(*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;

(*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) 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, with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, the pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a)(2), (7)(v), and (8)(i) and (ii) of this section and that were not offset by transfers or diversions of fluid milk products to the same unregulated supply plant from which fluid milk products to be allocated at this step were received:

(i) Should the pounds of skim milk to be subtracted from any class pursuant to this subparagraph exceed the pounds of skim milk remaining in such class, the pounds of skim milk in such class shall be increased by an amount equal to such quantity to be subtracted and the pounds of skim milk in the other classes (beginning with the higher-priced class) shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at other pool plants of the handler shall be adjusted to the extent possible in the reverse direction by a like amount. Such adjustment shall be made at the other plants in sequence beginning with the plant having the least minus location adjustment;

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

(i) Subject to the provisions of paragraphs (a)(12)(ii) and (iii) 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;

(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; and

(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 any class that exceeds the pounds of skim milk remaining in such class, the pounds of skim milk in such class shall be increased by an amount equal to such quantity to be subtracted and the pounds of skim milk in the other classes (beginning with the higher-priced class) shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at other pool plants of the handler shall be adjusted to the extent possible in the reverse direction by a like amount. Such adjustment shall be made at the other plants in sequence beginning with the plant having the least minus location adjustment;

(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 § 1060.44(a)(14) and the corresponding step of § 1060.44(b).

§ 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 prices 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 sup-

ply 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

1061.85 Assessment for order administration.
1061.86 Deduction for marketing services.

AUTHORITY: The provisions of this Part 1061 issued under secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

GENERAL PROVISIONS

§ 1061.1 General provisions.

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

DEFINITIONS

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

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

MINNESOTA COUNTIES

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

IOWA COUNTIES

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

§ 1061.3 Route disposition.

"Route disposition" means a delivery from a plant (including delivery from a retail store at such plant and delivery through vendors or distribution points) of any fluid milk product classified as Class I to a retail or wholesale outlet other than a milk or filled milk plant. A delivery through a vendor or through a distribution point shall be considered a route disposition of the plant at the location of the wholesale or retail outlet to which delivery is made.

§ 1061.4 [Reserved]

§ 1061.5 Distributing plant.

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

§ 1061.6 Supply plant.

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

§ 1061.7 Pool plant.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 1061.8 Nonpool plant.

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

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

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

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

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

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

§ 1061.9 Handler.

"Handler" means:

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

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

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

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

(e) A producer-handler; and

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

§ 1061.10 Producer-handler.

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

§ 1061.11 [Reserved]

§ 1061.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk in com-

pliance 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 diverted from a pool plant to an other order plant if the other order designates such person as a producer under that order with respect to such milk.

§ 1061.13 Producer milk.

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

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

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

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

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

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

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

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

§ 1061.14 Other source milk.

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

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

(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) 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 (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.

§ 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;

(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) 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

(v) 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;

(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 milk 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 pos-

sible 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 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 shall be increased (increasing Class III first to the extent permitted by the handler's total Class III utilization at his other pool plants) by an amount equal to such 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 other pool plants of the handler shall be adjusted to the extent possible 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;

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

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

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

(9) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 1061.40(b) (1) in

inventory at the beginning of the month that were not subtracted pursuant to paragraph (a)(5) and (7)(i) of this section;

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

(11) Subject to the provisions of paragraph (a)(11)(i) 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, 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 any class pursuant to this subparagraph exceed the pounds of skim milk remaining in such class, the pounds of skim milk in such class shall be increased by an amount equal to such quantity to be subtracted and the pounds of skim milk in the other classes (beginning with the higher-priced class) shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at other pool plants of the handler shall be adjusted to the extent possible in the reverse direction by a like amount;

(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) and (iii) 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;

(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; and

(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 any class that exceeds the pounds of skim milk remaining in such class, the pounds of skim milk in such class shall be increased by an amount equal to such quantity to be subtracted and the pounds of skim milk in the other classes (beginning with the higher-priced class) shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at other pool plants of the handler shall be adjusted to the extent possible in the reverse direction by a like amount;

(13) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products and bulk fluid cream products from another pool plant according to the classification of such products pursuant to § 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 § 1061.44(a)(14) and the corresponding step of § 1061.44(b).

§ 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]

§ 1061.53 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 before the 20th day of the following month not less than the uniform price, adjusted by the butterfat differential computed pursuant to § 1061.74 and less the following amounts:

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

(ii) Deductions for marketing services 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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ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

1063.85 Assessment for order administration.
1063.86 Deduction for marketing services.

AUTHORITY: The provisions of this Part 1063 issued under secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

GENERAL PROVISIONS

§ 1063.1 General provisions.

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

DEFINITIONS

§ 1063.2 Quad Cities-Dubuque marketing area.

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

§ 1063.3 [Reserved]

§ 1063.4 [Reserved]

§ 1063.5 Distributing plant.

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

§ 1063.6 Supply plant.

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

§ 1063.7 Pool plant.

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

(a) A distributing plant from which:

(1) The volume of Class I packaged fluid milk products, except filled milk, disposed of during the month either on routes (including routes operated by vendors) or through plant stores to retail or wholesale outlets or moved to other plants, less receipts of packaged fluid milk products other than filled milk from other pool distributing plants, is not less

than 45 percent 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 such receipts during the month are so disposed of in the marketing area on routes.

(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 and whose milk is received as producer milk at a pool plant or diverted pursuant to § 1063.13.

(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 § 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 diverted from a pool plant to an other order plant if the other order designates such person as a producer under that order with respect to such milk.

§ 1063.13 Producer milk.

"Producer milk" means the skim milk and butterfat contained in Grade A milk received at a pool plant directly from a producer. Milk normally received from a producer at a pool plant which is diverted from such pool plant by the operator of the plant or a handler described in § 1063.9(b) to a nonpool plant that is not a producer-handler plant shall also be producer milk and shall be deemed to have been received by the diverting handler at the plant from which diverted: *Provided,* That in any of the months of July through January milk diverted from the farm of a producer on more than the number of days that milk was delivered to a pool plant from such farm during the month shall not be deemed to have been received by the diverting handler.

§ 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, pool plants, or inventory at the beginning of the month;

(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 (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.

§ 1063.16 Fluid cream product.

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

§ 1063.17 Filled milk.

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

§ 1063.18 Cooperative association.

"Cooperative association" means any cooperative marketing association which the Secretary determines:

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

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

Handler Reports

§ 1063.30 Reports of receipts and utilization.

On or before the 7th day after the end of each month, each handler shall report for such month to the market administrator, in the detail and on the forms prescribed by the market administrator, as follows:

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

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

(2) [Reserved]

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

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1063.40(b)(1); and

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

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

(c) Each handler described in § 1063.9(b) shall report:

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

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

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

§ 1063.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1063.9 (a) and (b) shall report to the market administrator his producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer:

(1) His name and address;

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

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

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

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1063.76 (b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1063.32 Other reports.

In addition to the reports required pursuant to §§ 1063.30 and 1063.31, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligation under the order.

Classification of Milk

§ 1063.40 Classes of utilization.

Except as provided in § 1063.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1063.30 shall be classified as follows:

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

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

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

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

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

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

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

(4) Used to produce:

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

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

(iii) Any concentrated milk product in bulk, fluid form;

(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) 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

(v) 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 noti-

fied 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;

(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 milk 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 re-

constituted 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 shall be increased (increasing Class III first to the extent permitted by the handler's total Class III utilization at his other pool plants) by an amount equal to such 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 other pool plants of the handler shall be adjusted to the extent possible in the reverse direction by a like amount. Such adjustment shall be made at the other plants in sequence beginning with the plant having the least minus location adjustment:

(*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;

(*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) 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, 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 any class pursuant to this subparagraph exceed the pounds of skim milk remaining in such class, the pounds of skim milk in such class shall be increased by an amount equal to such quantity to be subtracted and the pounds of skim milk in the other classes (beginning with the higher-priced class) shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at other pool plants of the handler shall be adjusted to the extent possible in the reverse direction by a like amount. Such adjustment shall be made at the other plants in sequence beginning with the plant having the least minus location adjustment;

(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) and (iii) 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;

(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; and

(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 any class that exceeds the pounds of skim milk remaining in such class, the pounds of skim milk in such class shall be increased by an amount equal to such quantity to be subtracted and the pounds of skim milk in the other classes (beginning with the higher-priced class) shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at other pool plants of the handler shall be adjusted to the extent possible in the reverse direction by a like amount. Such adjustment shall be made at the other plants in sequence beginning with the plant having the least minus location adjustment;

(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 § 1063.44(a)(14) and the corresponding step of § 1063.44(b).

§ 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 cur-

rent 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) 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; and

(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.

(b) For purposes of calculating such adjustments, transfers between pool plants shall be assigned Class I disposition at the tranferee-plant, in excess of the sum of receipts at such plant from producers, and the volume assigned as Class I to receipts from other order plants and unregulated supply plants, such assignment to be made first to transferor-plants having the same Class I price, next to transferor-plants having a higher Class I price, and then in sequence to the plants having a lower Class I price beginning with the plant at which the highest Class I price would apply.

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

§ 1063.53 Announcement of class prices.

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

§ 1063.54 Equivalent price.

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

Uniform Price

§ 1063.60 Handler's value of milk for computing uniform price.

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler with respect to each of his pool plants and of each handler described in § 1063.9(b) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1063.44 by the applicable class prices and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1063.44(a)(14) and the corresponding step of § 1063.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1063.74, that are applicable at the location of the pool plant;

(c) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the pool plant or the Class II price, as the case may be, for the current month by the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1063.44 (a)(9) and the corresponding step of § 1063.44(b);

(d) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1063.44(a)(7) (i) through (iv) and the corresponding step of § 1063.44 (b), excluding receipts of bulk fluid cream products from an other order plant;

(e) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the transferor-plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1063.44(a)(7) (v) and (vi) and the corresponding step of § 1063.44 (b); and

(f) Add the amount obtained from multiplying the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1063.44 (a)(11) and the corresponding step of § 1063.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

§ 1063.61 Computation of uniform price.

For each month the market administrator shall compute a uniform price for milk of 3.5 percent butterfat content f.o.b. Rock Island, Ill., as follows:

(a) Combine into one total the values computed pursuant to § 1063.60 for all handlers who made the reports prescribed in § 1063.30 for such month, except those in default of payments required pursuant to § 1063.71 for the preceding month;

(b) Add the aggregate of the values of minus location adjustments and subtract the aggregate of all plus location adjustments pursuant to § 1063.75;

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

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

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1063.60(f); and

(e) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (d) of this section. The result shall be known as the uniform price for milk received from producers.

§ 1063.62 Announcement of uniform price and butterfat differential.

The market administrator shall announce publicly on or before:

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

(b) The 10th day after the end of each month the uniform price for such month.

PAYMENTS FOR MILK

§ 1063.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to §§ 1063.71, 1063.76, and 1063.77 and out of which he shall make all payments to handlers pursuant to §§ 1063.72 and 1063.77.

§ 1063.71 Payments to the producer-settlement fund.

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

(1) The total value of milk of the handler for such month as determined pursuant to § 1063.60.

(2) The sum of:

(i) The value at the uniform price, as adjusted pursuant to § 1063.75, of such handler's receipts of producer milk; and

(ii) The value at the uniform price applicable at the location of the plant from which received of other source milk for which a value is computed pursuant to § 1063.60(f).

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

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

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

§ 1063.72 Payments from the producer-settlement fund.

On or before the 14th day after the end of each month the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1063.71(a)(2) exceeds the amount computed pursuant to § 1063.71(a)(1); *Provided*, That if the balance in the producer-settlement fund is insufficient to make all payments pursuant to this paragraph, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the necessary funds are available. A handler who has not received the balance of such payments from the market administrator shall not be considered in violation of § 1063.73 if he reduces his payments to producers by not more than the amount of the reduction in payment from the producer-settlement fund.

§ 1063.73 Payments to producers and to cooperative associations.

Each handler shall make payment as follows:

(a) On or before the 17th day after the end of each month during which milk was received, to each producer for milk received from him and for which payment is not made pursuant to paragraph (b) of this section, at not less than the uniform price as adjusted pursuant to §§ 1063.74 and 1063.75.

(b) On or before the 15th day after the end of each month during which the milk was received, to a cooperative association for milk which it caused to be delivered to such handler from producers, if such cooperative association is authorized to collect such payments for its member producers and exercises such authority, an amount equal to the sum of the individual payments otherwise payable to such producers.

(c) On or before the 10th day after the end of the month, each handler shall pay to each cooperative association which is also a handler, for milk received from it not less than the value of such milk as classified pursuant to this part at the respective class prices, as adjusted by the butterfat differential specified in § 1063.74, that are applicable at the location of the receiving handler's pool plant.

§ 1063.74 Butterfat differential.

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

§ 1063.75 Plant location adjustments for producers and on nonpool milk.

(a) The uniform price for producer milk pursuant to § 1063.61 received at a pool plant shall be adjusted according to the location of the pool plant, at the rates set forth in § 1063.52; and

(b) For purposes of computations pursuant to §§ 1063.71 and 1063.72 the uniform price shall be adjusted at the rates set forth in § 1063.52 applicable at the location of the nonpool plant from which the milk was received, except that the adjusted uniform price shall not be less than the Class III price.

§ 1063.76 Payments by handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay on or before the 25th day after the end of the month to the market administrator for the producer-settlement fund the amount computed pursuant to paragraph (a) of this section. If the handler submits pursuant to §§ 1063.30(b) and 1063.31(b) the information necessary for making the computations, such handler may elect to pay in lieu of such payment the amount computed pursuant to paragraph (b) of this section:

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

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

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

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

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

(3) Subtract the pounds of reconstituted skim milk in route disposition

of fluid milk products in the marketing area from the partially regulated distributing plant;

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

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

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

(1) Determine the value that would have been computed pursuant to § 1063.60 for the partially regulated distributing plant if the plant had been a pool plant, subject to the following modifications:

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

(ii) Fluid milk products and bulk fluid cream products transferred from the partially regulated distributing plant to a pool plant or an other order plant shall be classified at the partially regulated distributing plant in the class to which allocated at the fully regulated plant. Such transfers shall be allocated to the extent possible to those receipts at the partially regulated distributing plant from pool plants and other order plants that are classified in the corresponding class pursuant to paragraph (b)(1)(i) of this section. Any such transfers remaining after the above allocation which are classified in Class I and for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1063.60 shall be priced at the uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee plant, with such uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

(iii) If the operator of the partially regulated distributing plant so requests, the value of milk determined pursuant to § 1063.60 for such handler shall include, in lieu of the value of other source milk specified in § 1063.60(f) less the value of such other source milk specified in § 1063.71(a)(2)(ii), a value of milk determined pursuant to § 1063.60 for each nonpool plant that is not an other order plant which serves as a supply plant for such partially regulated distributing plant by making shipments to the partially regulated distributing plant during the month equivalent to the requirements of § 1063.7(b) subject to the following conditions:

(a) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1063.30(b) and 1063.31(b) similar reports for each such nonpool supply plant;

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

(c) The value of milk determined pursuant to § 1063.60 for such nonpool supply plant shall be determined in the same manner prescribed for computing the obligation of such partially regulated distributing plant; and

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

(i) The gross payments by the operator of such partially regulated distributing plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1063.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated;

(ii) If paragraph (b)(1)(iii) of this section applies, the gross payments by the operator of such nonpool supply plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1063.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated; and

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

§ 1063.77 Adjustment of accounts.

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

Administrative Assessment and Marketing Service Deduction

§ 1063.85 Assessment for order administration.

As his pro rata share of the expense of administration of the order, each handler shall pay to the market administrator on or before the 15th day after the end of the month 3 cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to: (a) Producer milk, (b) other source milk allocated to Class I pursuant to § 1063.44(a)(7) and (11) and the corresponding steps of § 1063.44(b), except such other source milk that is excluded from the computations pursuant to § 1063.60(d) and (f); and (c) Class I milk disposed of from a partially regulated distributing plant on routes in the marketing area that exceeds the skim milk and butterfat subtracted pursuant to § 1063.76(a)(2).

§ 1063.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler in making payments to each producer pursuant to § 1063.73, shall deduct 6 cents per hundredweight or such lesser amount as the Secretary may prescribe with respect to all milk received by such handler from such producer (except such handler's own farm production), during the month, and shall pay such deductions to the market administrator not later than the 15th day after the end of the month. Such money shall be used by the market administrator to verify or establish weights, samples, and tests of milk received by handlers from such producers during the month and to provide such producers with market information.

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

PART 1064—MILK IN THE GREATER KANSAS CITY MARKETING AREA

Subpart—Order Regulating Handling

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AUTHORITY: The provisions of this Part 1064 issued under secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

GENERAL PROVISIONS

§ 1064.1 General provisions.

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

DEFINITIONS

§ 1064.2 Greater Kansas City marketing area.

"Greater Kansas City marketing area," hereinafter called "marketing area," means all the territory within the boundaries of the counties listed below, including territory within such boundaries occupied by government (municipal, State, or Federal) reservations, installations, institutions, or other similar establishments:

MISSOURI COUNTIES

Andrew.	Henry.
Atchison.	Holt.
Bates.	Jackson.
Buchanan.	Johnson.
Cass.	Lafayette.
Clay.	Nodaway.
Clinton.	Pettis.
Daviess.	Platte.
De Kalb.	St. Clair.
Gentry.	Worth.

KANSAS COUNTIES

Atchison.	Marshall.
Brown.	Miami.
Clay.	Morris.
Cloud.	Nemaha.
Dickinson.	Ottawa.
Doniphan.	Pottawatomie.
Douglas.	Republic.
Geary.	Riley.
Jackson.	Saline.
Jefferson.	Shawnee.
Johnson.	Wabaunsee.
Leavenworth.	Washington.
Lyon.	Wyandotte.

§ 1064.3 Route disposition.

"Route disposition" means a delivery (either direct or through a distributing facility such as a distribution point, a plant store, a vendor, or vending 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 diverted from a pool plant to an other order plant if the other order designates such person as a producer under that order with respect to such milk.

§ 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 dis-

tributing 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 §§ 1064.52, 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), pool plants, or inventory at the beginning of the month;

(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 (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.

§ 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;

(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) 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

(v) 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;

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in subparagraph 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 milk 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 shall be increased (increasing Class III first to the extent permitted by the handler's total Class III utilization at his other pool plants) by an amount equal to such 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 other pool plants of the handler shall be adjusted to the extent possible in the reverse direction by a like amount. Such adjustment shall be made at the other plants in sequence beginning with the plant having the least minus location adjustment:

(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;

(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 subskim milk subtracted pursuant to paragraph (a) (1) of this section;

(11) Subject to the provisions of paragraph (a)(11)(i) 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, 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 any class pursuant to this subparagraph exceed the pounds of skim milk remaining in such class, the pounds of skim milk in such class shall be increased by an amount equal to such quantity to be subtracted and the pounds of skim milk in the other classes (beginning with the higher-priced class) shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at other pool plants of the handler shall be adjusted to the extent possible in the reverse direction by a like amount. Such adjustment shall be made at the other plants in sequence beginning with the plant having the least minus location adjustment;

(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) and (iii) 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;

(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; and

(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 any class that exceeds the pounds of skim milk remaining in such class, the pounds of skim milk in such class shall be increased by an amount equal to such quantity to be subtracted and the pounds of skim milk in the other classes (beginning with the higher-priced class) shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at other pool plants of the handler shall be adjusted to the extent possible in the reverse direction by a like amount. Such adjustment shall be made at the other plants in sequence beginning with the plant having the least minus location adjustment;

(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 § 1064.44(a)(14) and the corresponding step of § 1064.44(b).

§ 1064.45 Market administrator's reports and announcements concerning classification.

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

(a) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1064.44(a)(12) and the corresponding step of § 1064.44(b), estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose.

(b) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from an other order plant, the class to which such receipts are allocated pursuant to § 1064.44 on the basis of such report, and, thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

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

(d) On or before the 14th day after the end of each month, report to each cooperative association which so requests the amount and class utilization of milk received by each handler from such cooperative association in its capacity as a handler described in § 1064.9(c) and directly from members of such cooperative association. For the purpose of this report, the milk so received shall be prorated to each class in proportion to the utilization by such handler in each class remaining after the allocation pursuant to § 1064.44(a) (1) through (13) and the corresponding steps of § 1064.44(b).

Class Prices

§ 1064.50 Class prices.

Subject to the provisions of § 1064.52, the class prices for the month per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $1.74.

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

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

§ 1064.51 Basic formula price.

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

§ 1064.52 Plant location adjustments for handlers.

(a) For milk received from producers at a pool plant located outside the marketing area and more than 50 miles but not more than 70 miles by shortest highway distance as measured by the market administrator, from the nearer of the City Halls in Kansas City, Mo., or Topeka, Kans., which is classified as Class I milk or assigned Class I location adjustment credit pursuant to paragraph (b) of this section, the price computed pursuant to § 1064.50(a) shall be reduced

by 10 cents, and by an additional 1.5 cents for each 10 miles or fraction thereof that such plant is more than 70 miles from such City Hall.

(b) For purposes of calculating such adjustment, bulk transfers between pool plants shall be assigned to the Class I disposition at the transferee-plant prorated with the sum of receipts at such plant of producer milk and the pounds assigned as Class I to receipts from other order plants and unregulated supply plants.

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

§ 1064.53 Announcement of class prices.

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

§ 1064.54 Equivalent price.

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

UNIFORM PRICES

§ 1064.60 Handler's value of milk for computing uniform price.

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler with respect to each of his pool plants and of each handler described in § 1064.9 (b) and (c) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1064.44 by the applicable class prices and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1064.44(a)(14) and the corresponding step of § 1064.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1064.74, that are applicable at the location of the pool plant;

(c) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the pool plant or the Class II price, as the case may be, for the current month by the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1064.44(a)(9) and the corresponding step of § 1064.44(b);

(d) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1064.44(a)(7) (i) through (iv) and the corresponding step of § 1064.44(b), excluding receipts of bulk fluid cream products from an other order plant;

(e) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the transferor-plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1064.44(a)(7) (v) and (vi) and the corresponding step of § 1064.44 (b); and

(f) Add the amount obtained from multiplying the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1064.44 (a)(11) and the corresponding step of § 1064.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

§ 1064.61 Computation of uniform price (including weighted average price and base and excess prices).

(a) For each month the market administrator shall compute the "uniform price" per hundredweight of milk of 3.5 percent butterfat content received from producers (or "weighted average price") as follows:

(1) Combine into one total the values computed pursuant to § 1064.60 for all handlers who filed the reports prescribed by § 1064.30 for the month and who made the payments pursuant to §§ 1064.71 and 1064.73 for the preceding month;

(2) Add an amount equal to the total value of the location adjustments computed pursuant to § 1064.75;

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

(4) Subtract an amount computed by multiplying the total hundredweight of producer milk included pursuant to paragraph (a)(1) of this section by 5 cents;

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

(i) The total hundredweight of producer milk; and

(ii) The total hundredweight for which a value is computed pursuant to § 1064.60(f); and

(6) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the "weighted average price" and for the months of August through January shall be the "uniform price" for milk received from producers.

(b) For each month of February through July, the market administrator shall compute the uniform prices per hundredweight for base milk and for excess milk as follows:

(1) Subtract from the amount resulting from the computations made pursuant to paragraph (a) (1) through (4) of this section an amount computed by multiplying the weighted average price plus 5 cents times the hundredweight of milk specified in paragraph (a)(5)(ii) of this section;

(2) Determine the value of excess milk by multiplying the hundredweight of producer milk determined to be excess milk in series beginning with Class III by the respective class prices minus 5 cents and adding together the resulting amounts;

(3) Divide the total value of excess milk obtained in paragraph (b)(2) of this section by the total hundredweight of such milk and adjust to the nearest cent. The resulting figure shall be the uniform price for excess milk of 3.5 percent butterfat content received from producers;

(4) Subtract the value of excess milk obtained in paragraph (b)(2) of this section from the aggregate value of milk obtained in paragraph (b)(1) of this section and adjust by any amount involved in adjusting the uniform price of excess milk to the nearest cent;

(5) Divide the amount obtained in paragraph (b)(4) of this section by the total hundredweight of producer milk determined to be base milk; and

(6) Subtract not less than 4 cents nor more than 5 cents from the amount computed pursuant to paragraph (b)(5) of this section. The resulting figure shall be the uniform price for base milk of 3.5 percent butterfat content received from producers.

§ 1064.62 Announcement of uniform prices and butterfat differential.

The market administrator shall announce publicly on or before:

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

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

PAYMENTS FOR MILK

§ 1064.70 Producer-settlement fund.

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

(a) Payments made by handlers pursuant to §§ 1064.71, 1064.76, and 1064.77.

(b) Payments due handlers pursuant to §§ 1064.72 and 1064.77: *Provided*, That payments due any handler shall be offset by payments due from such handler pursuant to §§ 1064.71, 1064.76, 1064.77, 1064.85, and 1064.86.

§ 1064.71 Payments to the producer-settlement fund.

(a) On or before the 14th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the amount

specified in paragraph (a) (1) of this section exceeds the amount specified in paragraph (a) (2) of this section:

(1) The total value of milk of the handler for such month as determined pursuant to § 1064.60.

(2) The sum of:

(i) The amount required to be paid producers (including payments to producers through cooperative associations) pursuant to § 1064.73 before adjustment for butterfat content and before deductions authorized by the producer or cooperative association or for marketing services pursuant to § 1064.86; and

(ii) The value at the weighted average price applicable at the location of the plant from which received plus 5 cents of other source milk for which a value is computed pursuant to § 1064.60(f).

(b) During each month of February through July each handler pursuant to § 1064.9(c), on or before the 14th day after the end of the month, shall pay to the market administrator the amount, if any, by which the amount specified in paragraph (b) (1) of this section exceeds the amount specified in paragraph (b) (2) of this section:

(1) The total value of such association's member producer milk at the applicable weighted average price computed pursuant to § 1064.61; and

(2) The total value of such association's member producer base and excess milk at the applicable uniform base and excess prices computed pursuant to § 1064.61.

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

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

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

§ 1064.72 Payments from the producer-settlement fund.

On or before the 14th day after the end of each month the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1064.71 (a) (2) or (b) (2) exceeds the amount computed pursuant to § 1064.71 (a) (1) or (b) (1). If at such time the balance in the producer-settlement fund is insufficient to make all payments pursuant to this paragraph, the market administrator shall reduce uniformly such payment and shall complete such payments as soon as the necessary funds are available.

§ 1064.73 Payments to producers and to cooperative associations.

Each handler shall make payment as follows:

(a) On or before the 15th day after the end of each month during which the milk was received, to each producer for whom payment is not made pursuant to paragraph (c) or (d) of this section, at not less than the applicable uniform price(s) pursuant to § 1064.61, adjusted by the butterfat differential computed pursuant to § 1064.74 and the location adjustment to producers pursuant to § 1064.75, and less the following amounts: (1) the payments made pursuant to paragraph (b) of this section, (2) deductions for marketing services made pursuant to § 1064.86, and (3) any deductions authorized by the producer: *Provided,* That if by such date such handler has not received full payment for such month pursuant to § 1064.72 he may reduce his total payment to all producers uniformly by not less than the amount of reduction in payment from the market administrator; the handler shall, however, complete such payments not later than the date for making such payments pursuant to this paragraph next following receipt of the balance from the market administrator.

(b) On or before the 25th day of each month to each producer (1) for whom payment is not received from the handler by a cooperative association pursuant to paragraphs (c) and (d) of this section; and (2) who had not discontinued shipping milk to such handler before the 18th day of the month, a partial payment with respect to milk received from such producer during the first 15 days of the month at the approximate value of such milk, not to be less than the Class III price for the preceding month, without deduction for hauling.

(c) To a cooperative association which has filed a written request for such payment with such handler and with respect to producers for whose milk the market administrator determines such cooperative association is authorized to collect payment as follows:

(1) On or before the 20th day of the month, an amount equal to not less than the sum of the individual payments otherwise payable to producers pursuant to paragraph (b) of this section less any deductions authorized in writing by such cooperative association; and

(2) On or before the 14th day after the end of each month an amount equal to not less than the sum of the individual payments otherwise payable to producers pursuant to paragraph (a) of this section, less proper deductions authorized in writing by such cooperative association.

(d) To a cooperative association with respect to milk for which such association is acting in the capacity of a handler pursuant to § 1064.9(c):

(1) On or before the 20th day of the month an amount equal to the rate specified in paragraph (b) of this section times the volume received during the first 15 days of the month; and

(2) On or before the 14th day after the end of each month an amount equal to not less than the value of such milk at the applicable weighted average or uniform price pursuant to § 1064.61(a) (5), as adjusted pursuant to §§ 1064.74 and 1064.75, less payment made pursuant to paragraph (d) (1) of this section.

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

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

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

(3) The minimum rate or rates at which payment to the producer is required under the provisions of §§ 1064.73, 1064.74, and 1064.75;

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

(5) The amount or the rate per hundredweight of each deduction claimed by the handler, including any deduction claimed under paragraph (b) of this section and § 1064.86 together with a description of the respective deductions; and

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

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

(1) On or before the 23d day of the month, the total pounds of milk received during the first 15 days of the month; and

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

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

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

(iii) The amount of any payments due such producer pursuant to § 1064.77.

§ 1064.74 Butterfat differential.

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

§ 1064.75 Plant location adjustments for producers and on nonpool milk.

(a) The uniform price pursuant to § 1064.61(a) and the uniform price for base milk pursuant to § 1064.61(b) for producer milk received at a pool plant or diverted from a pool plant shall be reduced according to the location of the pool plant at the rate set forth in § 1064.52, subject to § 1064.13(c).

(b) For purposes of computations pursuant to §§ 1064.71 and 1064.72 the weighted average price shall be adjusted at the rates set forth in § 1064.52 applicable at the location of the nonpool plant from which the milk was received, except that the adjusted weighted average price plus 5 cents shall not be less than the Class III price.

§ 1064.76 Payments by handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant, except a plant described in § 1064.7(d)(3), shall pay on or before the 25th day after the end of the month to the market administrator for the producer-settlement fund the amount computed pursuant to paragraph (a) of this section. If the handler submits pursuant to §§ 1064.30(b) and 1064.31(b) the information necessary for making the computations, such handler may elect to pay in lieu of such payment the amount computed pursuant to paragraph (b) of this section:

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

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

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

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

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

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

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

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

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

(1) Determine the value that would have been computed pursuant to § 1064.60 for the partially regulated distributing plant if the plant had been a pool plant, subject to the following modifications:

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

(ii) Fluid milk products and bulk fluid cream products transferred from the partially regulated distributing plant to a pool plant or an other order plant shall be classified at the partially regulated distributing plant in the class to which allocated at the fully regulated plant. Such transfers shall be allocated to the extent possible to those receipts at the partially regulated distributing plant from pool plants and other order plants that are classified in the corresponding class pursuant to paragraph (b)(1)(i) of this section. Any such transfers remaining after the above allocation which are classified in Class I and for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1064.60 shall be priced at the uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee plant, with such uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

(iii) If the operator of the partially regulated distributing plant so requests, the value of milk determined pursuant to § 1064.60 for such handler shall include, in lieu of the value of other source milk specified in § 1064.60(f) less the value of such other source milk specified in § 1064.71(a)(2)(ii), a value of milk determined pursuant to § 1064.60 for each nonpool plant that is not an other order plant which serves as a supply plant for such partially regulated distributing plant by making shipments to the partially regulated distributing plant during the month equivalent to the requirements of § 1064.7(b), subject to the following conditions:

(a) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1064.30(b) and 1064.31(b) similar reports for each such nonpool supply plant;

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

(c) The value of milk determined pursuant to § 1064.60 for such nonpool supply plant shall be determined in the same manner prescribed for computing the obligation of such partially regulated distributing plant; and

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

(i) The gross payments by the operator of such partially regulated distributing plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1064.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated;

(ii) If paragraph (b)(1)(iii) of this section applies, the gross payments by the operator of such nonpool supply plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1964.74, 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 hun-

dredweight, 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: The provisions of this Part 1065 issued under secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

GENERAL PROVISIONS

§ 1065.1 General provisions.

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

DEFINITIONS

§ 1065.2 Nebraska-Western Iowa marketing area.

The "Nebraska-Western Iowa marketing area" (hereinafter referred to as the "marketing area") means all the territory within the boundaries of the counties and townships listed below, including such territory as is now occupied and as may be occupied in the future by Government (municipal, State or Federal) reservations, installations, institutions, or other similar establishments. Where such establishment is partly within and partly without the designated boundaries, the marketing area shall include the entire area encompassed by such establishment.

(a) *Zone 1.*

IOWA COUNTIES

Fremont.
Harrison.
Monona.
Mills.
Pottawattamie (only the townships of Boomer, Crescent, Garner, Hardin, Hazel Dell, Kane, Keg Creek, Lake, Lewis, Minden, Neola, Norwalk, Rockford, Silver Creek, Washington, and York.)
Woodbury.

NEBRASKA COUNTIES

Antelope.
Boone.
Burt.
Butler.
Cass.
Cedar.
Clay.
Colfax.
Cuming.
Dakota.
Dixon.
Dodge.
Douglas.
Fillmore.
Gage.
Hamilton.
Jefferson.
Johnson.
Knox.
Lancaster.
Madison.
Merrick.
Nance.
Nemaha.
Nuckolls.
Otoe.
Pierce.
Platte.
Polk.
Saline.
Sarpy.
Saunders.
Seward.
Stanton.
Thayer.
Thurston.
Washington.
Wayne.
York.

SOUTH DAKOTA

That portion of Union County comprising Jefferson Township, North Sioux City, and the unorganized territory adjacent thereto, as defined and mapped in the United States 1960 Census of Population.

(b) *Zone 2.*

IOWA COUNTIES

Cass.	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 under a Grade A label, 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;

(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; and

(d) Has met the requirements pursuant to § 1065.97(c).

§ 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 (b) or (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);

(3) Any person with respect to milk produced by him which is diverted from a pool plant to an other order plant if the other order designates such person as a producer under that order with respect to such milk; and

(4) Any person in any month in which he holds a Class I base if any portion of his milk is delivered, other than as producer milk, to a nonpool plant at which there is Class I disposition.

§ 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), pool plants, or inventory at the beginning of the month;

(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 mixtured) 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;

(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) 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

(v) 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;

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

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1065.9 (b) or (c), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

§ 1065.42 Classification of transfers and diversions.

(a) *Transfers to pool plants.* Skim milk or butterfat transferred in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant or by a handler described in § 1065.9(c) to another handler's pool plant shall be classified as follows:

(1) Such transfers from a pool plant shall be classified as Class I milk unless the operators of both plants request the same classification in another class. In either case, the classification of such transfers shall be subject to the following conditions:

(i) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant after the computations pursuant to § 1065.44(a)(12) and the corresponding step of § 1065.44(b);

(ii) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1065.44(a)(7) or the corresponding step of § 1065.44(b), the skim milk or butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(iii) If the transferor-handler received during the month other source milk to be allocated pursuant to § 1065.44(a) (11) or (12) or the corresponding steps of § 1065.44(b), the skim milk or butterfat so transferred, up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant; and

(2) Such transfers by a handler described in § 1065.9(c) shall be classified pro rata to the respective quantities of skim milk and butterfat remaining in each class after the computations pursuant to § 1065.44(a)(13)(i) and the corresponding step of § 1065.44(b).

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

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

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

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

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

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

(6) If the form in which any fluid milk product that is transferred to an other order plant is not defined as a fluid milk product under such other order, classification under this paragraph shall be in accordance with the provisions of § 1065.40.

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

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

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

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

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

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

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

(*a*) The transferor-handler or diverter-handler claims such classification in his report of receipts and utilization filed pursuant to § 1065.30 for the month within which such transaction occurred; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(vii) Receipts of bulk fluid cream products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remain-

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

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

§ 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;

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

(vii) Receipts of fluid milk products from persons described in § 1065.12(b) (4);

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

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

(ii) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a) (2), (7) (v), and (8) (i) of this section which are in excess of the pounds of skim milk determined pursuant to paragraph (a) (8) (ii) (a) through (c) of this section. Should the pounds of skim milk to be subtracted from Class II and Class III combined exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III shall be increased (increasing Class III first to the extent permitted by the handler's total Class III utilization at his other pool plants) by an amount equal to such 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 other pool plants of the handler shall be adjusted to the extent possible in the reverse direction by a like amount. Such adjustment shall be made at the other plants in sequence beginning with the plant having the least minus location adjustment:

(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;

(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) 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, 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 any class pursuant to this subparagraph exceed the pounds of skim milk remaining in such class, the pounds of skim milk in such class shall be increased by an amount equal to such quantity to be subtracted and the pounds of skim milk in the other classes (beginning with the higher-priced class) shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at other pool plants of the handler shall be adjusted to the extent possible in the reverse direction by a like amount. Such adjustment shall be made at the other plants in sequence beginning with the plant having the least minus location adjustment;

(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) and (iii) 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;

(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; and

(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 any class that exceeds the pounds of skim milk remaining in such class, the pounds of skim milk in such class shall be increased by an amount equal to such quantity to be subtracted and the pounds of skim milk in the other classes (beginning with the higher-priced class) shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at other pool plants of the handler shall be adjusted to the extent possible in the reverse direction by a like amount. Such adjustment shall be made at the other plants in sequence beginning with the plant having the least minus location adjustment;

(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 § 1065.44(a)(14) and the corresponding step of § 1065.44(b).

§ 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.

§ 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 as-

signed 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 Prices

§ 1065.60 Handler's value of milk for computing uniform prices.

For the purpose of computing the uniform prices, 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 (vii) 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 prices.

(a) 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:

(1) 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;

(2) Subtract an amount equal to the total value of the plus location adjustments computed pursuant to § 1065.75;

(3) Add an amount equal to the total value of the minus location adjustments computed pursuant to § 1065.75;

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

(5) Subtract an amount computed by multiplying the total hundredweight of producer milk included pursuant to paragraph (a)(1) of this section by 5 cents;

(6) 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

(7) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the "weighted average price," and, except for any month in which a Class I base plan is effective, shall be the "uniform price" for milk received from producers.

(b) For each month in which a base plan is effective the market administrator shall compute the uniform prices per hundredweight for base milk and excess milk of 3.5-percent butterfat content received from producers as follows:

(1) From the net amount computed pursuant to paragraph (a)(1) through (6) of this section subtract the amounts specified in paragraph (b)(1) (i) through (v) of this section:

(i) The amount computed by multiplying the hundredweight of milk specified in paragraph (a)(6)(ii) of this section by the weighted average price plus 5 cents for all milk;

(ii) The amount obtained by multiplying by the Class III price, less 5 cents, the total hundredweight of milk delivered by all producers who have no Class I base;

(iii) The amount computed by multiplying the hundredweight of excess milk by the Class III price, less 5 cents, provided that the quantity of milk to which the Class III price, less 5 cents, is applied pursuant to this subdivision plus the quantity pursuant to paragraph (b)(1)(ii) of this section shall not exceed the quantity of producer milk in Class III;

(iv) An amount computed by multiplying any remaining hundredweight of excess milk by the Class II price, less 5 cents, to the extent that producer milk in Class II is available for such assignment; and

(v) An amount computed by multiplying any remaining hundredweight of excess milk by the Class I price, less 5 cents;

(2) Divide the net amount obtained in paragraph (b)(1) of this section by the total hundredweight of base milk and subtract not less than 4 cents but less than 5 cents. This result shall be known as the uniform base price per hundredweight of milk; and

(3) Divide the amount obtained in paragraph (b)(1)(iii), (iv) and (v) of this section by the hundredweight of excess milk, and subtract any fractional part of 1 cent. This result shall be known as the uniform excess price per hundredweight of milk.

§ 1065.62 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 applicable uniform prices 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 applicable uniform prices, as adjusted pursuant to § 1065.75, of such handler's receipts of producer milk; and

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

Except in each month in which § 1065.73a applies, 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 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 (b) or (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 weighted average 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 or rates at which payment to the producer is required under the provisions of §§ 1065.61 (a), 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.

§ 1065.73a Payments to producers and to cooperative associations under a Class I base plant.

For each month in which a Class I base plan is effective 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 paragraphs (c) and (d) of this section, at not less than the uniform base price for the quantity of base milk received, as adjusted pursuant to §§ 1065.74 and 1065.75, at not less than the uniform excess price for the quantity of excess milk received, as adjusted pursuant to § 1065.74 and at not less than the Class III price, less 5 cents, as adjusted pursuant to § 1065.74 for the quantity of

milk received from producers for whom no base milk is computed, less the following amounts: (1) The payments made pursuant to paragraph (b) of this section; (2) Deductions for marketing services made 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 shall not be deemed to be in violation of this paragraph if he reduces uniformly for all producers his payments per hundredweight pursuant to this paragraph by a total amount not in excess of the reduction in payment from the market administrator; however, the handler shall make such balance of payment uniformly to those producers to whom it is due on or before the date for making payments pursuant to this paragraph next following that on which such balance of payments is received from the market administrator;

(b) On or before the 27th day of each month to each producer for whom payment is not received from the handler by a cooperative association pursuant to paragraph (c) or (d) of this section and who has not discontinued shipping milk to such handler, a partial payment with respect to milk received from such producer during the first 15 days of the month in an amount per hundredweight not to be less than the weighted average price for the preceding month:

(c) To a cooperative association which has filed a written request for such payment with such handler 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;

(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 (b) or (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 weighted average 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 or rates at which payment to the producer is required under the provisions of §§ 1065.61 (b), 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.

§ 1065.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the applicable 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.

§ 1065.75 Plant location adjustments for producers and on nonpool milk.

(a) The applicable uniform prices 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 plant or diverted to a nonpool plant located outside the marketing area the applicable uniform prices 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 weighted average 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 weighted average price plus 5 cents shall not be less than the Class III price.

(d) For any month in which a base plan is effective, if the milk of a producer is delivered as producer milk to plants at which different base prices apply, then for purposes of location adjustment the base milk of the producer shall be prorated to plants in proportion to deliveries of the producer's milk to such plants.

§ 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 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 § 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 or § 1065.73a, 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 or § 1065.73a 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.

Class I Base Plan

§ 1065.90 Production history base and Class I base.

For purposes of determination and assignment of Class I base of each producer:

(a) "Production history base" as assigned to each producer means a quantity of milk in pounds per day as computed pursuant to §§ 1065.92, 1065.93, or 1065.94.

(b) "Production history period" means the period to be used for the computation of production history base. Subject to the conditions of paragraph (b) (1), (2), and (3) of this section, a production history period for a producer shall be a 1-year, 2-year, or 3-year production history period depending on whether milk deliveries by the producer began on or before July 1 in the first, second, or third calendar year, respectively, preceding the February 1 on which the production history base is being determined or preceding the most recent February 1.

(1) The production history period of a producer who has forfeited his Class I base pursuant to § 1065.97(a) or has disposed of all of his Class I base shall begin on the later of the following dates:

(i) The first day of the 13th month after the month in which the producer ceased deliveries of producer milk or disposed of his Class I base, or

(ii) The first day of production delivered when the producer resumes deliveries of producer milk.

(2) Except as provided in paragraph (b)(1) of this section, if the milk deliveries of any dairy farmer are interrupted for 90 days or more during the period prior to the effective date of this provision or prior to the dairy farmer qualifying as a producer, only the period of milk deliveries following such interruption shall be included in the producer's production history period.

(3) In the case of a producer who has acquired the herd of a member of his

immediate family (either before or after the effective date of this provision) and has continued production with such herd, the deliveries made by the previous producer during the production history period shall be assumed to have been delivered by the current producer for use in computing a production history base, unless the previous owner transferred the Class I base to a third person.

(c) "Class I base" means a quantity of milk in pounds per day as computed pursuant to § 1065.95 for which a producer may receive the uniform price for base milk;

(d) "Average daily milk deliveries" of a producer in any specified period used for computing production history bases means the total pounds of milk delivered during the period by the producer to pool plants and to nonpool plants excluding milk delivered other than as a producer pursuant to § 1065.12(b)(4) divided by the greater of the number of days pursuant to paragraph (d) (1) or (2) of this section.

(1) The number of days' production delivered; or

(2) The calendar days from the first day of delivery through the last day of the period less the number of days' production the producer is prevented from delivering because of storm conditions: *Provided*, That the subtraction for storm conditions shall not exceed 8 days in any calendar year or exceed 4 days if a period of 6 months or less is involved.

§ 1065.91 Base milk and excess milk.

(a) "Base milk" means milk received from a producer during a month which is not in excess of his Class I base multiplied by the number of days in the month, except that if milk is received from a producer for only part of a month, base milk shall be milk received from such producer which is not in excess of his Class I base multiplied by the number of days of production of producer milk delivered during the month; and

(b) "Excess milk" means producer milk other than that defined under paragraph (a) of this section from producers delivering base milk.

§ 1065.92 Computation of production history base for each producer.

A production history base shall be determined by the market administrator pursuant to this section and § 1065.93 for each producer eligible for such base on the effective date of this provision and on February 1 of each year thereafter, respectively. Subject to the conditions of paragraph (h) of this section, a production history base for each producer on the effective date of this provision shall be determined by the market administrator as follows:

(a) The production history base for each producer who began milk deliveries not later than July 1, 1971, shall be calculated by adding the average daily milk deliveries during 1971 to the average daily milk deliveries in 1972 and dividing by two.

(b) The production history base for each producer who began delivery after July 1, 1971, but not later than July 1, 1972, shall be the average daily milk deliveries during the period beginning with the first delivery and through the end of the year 1972.

(c) The production history base for each producer not specified in paragraphs (a) and (b) of this section who began milk deliveries before October 1, 1972, shall be the average daily milk deliveries during the period beginning with the first delivery and through the end of such year multiplied by 0.80.

(d) The production history base for each producer who began milk deliveries on or after October 1, 1972, shall be computed pursuant to § 1065.93(c).

(e) For each producer who became a producer for this market before the effective date of this provision because the plant to which he regularly delivered milk became a fully regulated plant pursuant to this order, a production history base shall be determined, if possible, pursuant to paragraph (a), (b), (c), or (d) of this section, based on his deliveries of milk as if the nonpool plant(s) to which he delivered had been a pool plant(s) during the representative period;

(f) A producer not described pursuant to paragraph (e) of this section who delivered milk to a nonpool plant(s) prior to becoming a producer shall be assigned a production history base if such base can be computed pursuant to paragraph (a), (b), (c), or (d) of this section from deliveries of milk from the same farm on which he is a producer at time of base assignment as if the plant(s) to which he delivered had been a pool plant(s) during the production history period.

(g) For a producer who held producer-handler status at any time subsequent to January 1, 1971, a production history base shall be calculated as described in paragraph (a), (b), (c), or (d) of this section as if the milk of his own production received at his producer-handler plant had been received at a pool plant;

(h) The determination of a production history base pursuant to this section shall be subject to the following conditions:

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

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

§ 1065.93 New producers.

The market administrator shall determine a production history base for each producer for whom a production history base was not determined pursuant to § 1065.92 as follows:

(a) Any producer who delivered his milk to a nonpool plant that became a pool plant shall be assigned a production history base on the same basis as other producers under the order as though the deliveries to the nonpool plant had been deliveries to a pool plant, except that assignment of base in the case of any producer who previously forfeited base or disposed of base by transfer will be subject to the provisions of paragraph (d) of this section.

(b) A producer other than a producer pursuant to paragraph (a) of this section who delivered milk to a nonpool plant prior to becoming a producer as defined in this order and who has at least a 1-year production history period shall be assigned a production history base, effective on the first day of the second month following the month in which he began deliveries of producer milk to a pool plant, on the same basis as if he had been a producer under the order and his milk deliveries to the nonpool plant had been deliveries to a pool plant: *Provided*, That the production history base effective for such producer pursuant to this paragraph in any month before updating shall not exceed the average daily milk deliveries of such producer during the first 2 months of producer milk deliveries from the same production facilities from which milk deliveries were made during his production history period.

(c) A producer whose production history period is less than a 1-year production history period, except a producer assigned production history base pursuant to § 1065.92(c), shall be assigned a production history base on the effective date of this provision or on the first day of the second month following the month in which as a producer he began milk deliveries in an amount equal to 50 percent of his average daily milk deliveries during the immediately preceding 2-month period. Such production history base shall be effective for such producer unless a production history base is acquired by transfer, in which case the greater of the acquired or the base computed from his own production shall be the effective production history base.

(d) A producer who, after having forfeited or disposed of all his Class I base, either continues as a producer on the market or discontinues deliveries to the market and thereafter returns to the market as a producer, shall be assigned a production history base in the manner provided in paragraph (c) of this section, such assignment to be effective not earlier than the first day of the 15th month after the month in which the producer who forfeits his base ceases deliveries or a producer who disposes of all his Class I base makes such disposition. In the application of this provision, use of the same production facilities by another person (or the same person under a different name) to produce milk after the above described forfeiture or transfer of base shall be considered as a continuation of the operation by the previous operator if the new operator is a member of the immediate family of the previous operator. This provision shall be applied also to any production facility to which a Class I base has not been assigned that is operated by a person in which the producer who forfeited or transferred his base has a financial interest if such facility commences produc-

tion on or after the effective date of the transfer or forfeiture, or such producer acquired his financial interest in such person later than 3 months prior to the effective date of the base transfer or forfeiture: *Provided*, That in the case of a producer who forfeited his base because he continued to deliver his milk to a plant that had been a pool plant but lost its pool plant qualification, assignment of base pursuant to paragraph (a) of this section will not be subject to delay to the first day of the 15th month after forfeiture, and deliveries by such producer during the period of forfeiture shall not be excluded from production history by reason of such forfeiture.

§ 1065.94 Updating of production history bases.

The production history base for each producer who has neither disposed of his entire base by transfer nor forfeited his base pursuant to § 1065.97(a), or after having disposed of his entire base by transfer or forfeiture has met the delivery requirement prescribed in § 1065.93 (d) for determination of new production history base, shall be determined by the market administrator on February 1, 1974, and each February 1 thereafter as follows:

(a) In updating a production history base as described in this paragraph, adjustments to a producer's previously assigned production history base and/or average daily milk deliveries in prior years shall be made as follows:

(1) The prior production history base assigned to such producer shall be changed in proportion to the change in Class I base due to adjustment for hardship or loss of Class I base because of underdelivery of base. In the case of transfer of base production history base shall be adjusted as specified in § 1065.96 (a).

(2) The average daily milk deliveries of a producer in any calendar year that is part of his production history period prior to any net disposal of Class I base by transfers since January 31 of the preceding year or any underdelivery causing reduction of Class I base, shall be reduced in proportion to the net change in Class I base. For the purpose of this subparagraph disposal of base in January shall be treated as if disposed of in the preceding December.

(3) If the average daily milk deliveries of the producer in the preceding year are less than 90 percent of the Class I base assigned to such producer in the preceding year as adjusted for hardship and less any net disposal of base by transfer, then the producer's Class I base shall be reduced by the amount of the difference between such average daily milk deliveries and such Class I base as adjusted for hardship and disposal of base by transfer, and the production history base of such producer shall be reduced in the same proportion as the reduction of Class I base: *Provided*, That this subparagraph shall not apply in any year in which total producer milk is 135 percent or more of the Class I disposition described in § 1065.95(a)(1).

(4) If the net effect of all adjustments for any period is a reduction greater than the production history base or average daily deliveries prior to adjustment, then the resulting amount shall be zero and such period shall not be a production history period.

(b) Effective February 1, 1974, the market administrator shall update the production history base of each producer who has a production history period of 1 year or more as follows: Add (1) the average daily milk deliveries of such producer during the year 1973 and (2) twice the production history base previously assigned to such producer as adjusted pursuant to paragraph (a) of this section, and divide the sum by 3. If such result is less than the production history base previously assigned to such producer as adjusted pursuant to paragraph (a) of this section, then such previous production history base as adjusted shall be the effective production history base.

(c) Effective February 1, 1975, and February 1 in each year thereafter the market administrator shall update the production history base for specified producers as follows:

(1) For each producer who has a 3-year production history period, add (i) the average daily milk deliveries during the preceding calendar year and (ii) the average daily milk deliveries during each of the second and third preceding calendar years (or portion of a year) reduced by any adjustment pursuant to paragraph (a) of this section, and divide such total by 3. If such result is less than the production history base assigned to such producer on or after February 1 of the preceding year as adjusted pursuant to paragraph (a) of this section then such previously assigned production history base, as adjusted, shall be the effective production history base.

(2) For each producer who has a 2-year production history period who did not acquire Class I base by transfer add (i) the average daily milk deliveries in the preceding year, (ii) the average daily milk deliveries in the second preceding year reduced by any adjustment pursuant to paragraph (a) of this section, and (iii) the initial production history base assigned to (or computed for) such producer pursuant to § 1065.92 (c) or (d) or § 1065.93(c) adjusted pursuant to paragraph (a) of this section, and divide the sum by 3. If such result is less than the production history base assigned to such producer on or after February 1 of the preceding year as adjusted pursuant to paragraph (a) of this section, then such previously assigned production history base, as adjusted, shall be the effective production history base.

(3) For each producer who has a 1-year production history period add (i) the average daily milk deliveries of such producer during such 1-year period and (ii) twice the initial production history base assigned to (or computed for) such producer pursuant to § 1065.93(c) adjusted pursuant to paragraph (a) of this section, and divide the sum by 3. If such result is less than the initial production history base assigned to (or computed for) such producer as adjusted pursuant to paragraph (a) of this section, then such initial production history base, as adjusted, shall be the effective production history base.

(4) For each producer who has a 2-year production history period and who has acquired Class I base by transfer, add (i) the average daily milk deliveries of such producer during the preceding year and (ii) twice the production history base assigned to such producer on or after February 1 of the preceding year adjusted pursuant to paragraph (a) of this section, and divide the sum by 3. If such result is less than the production history base previously assigned to such producer as adjusted pursuant to paragraph (a) of this section, then such previously assigned production history base, as adjusted, shall be the effective production history base.

(d) For a producer who is assigned an initial history of production pursuant to § 1065.92 (e), (f), (g) and § 1065.93 the market administrator shall update his history of production from year to year in the manner applicable to a producer delivering to a pool plant as provided in paragraphs (b) and (c) of this section.

§ 1065.95 Computation of Class I base for each producer.

On the effective date of this provision and on February 1, 1974, and February 1 of each subsequent year the market administrator shall assign a Class I base to each producer who has a production history base. Class I bases shall be assigned to producers described in § 1065.93 when they are issued production history bases. On February 1 of each year Class I bases shall be computed as follows:

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

(1) Determine the sum of Class I dispositions during the preceding calendar year specified in paragraph (a)(1) (i), (ii), and (iii) of this section:

(i) Class I producer milk pursuant to § 1065.44;

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

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

(2) Multiply the quantity computed pursuant to paragraph (a)(1) of this section by 1.20 and divide such result by the number of days in such year.

(3) Divide the quantity computed pursuant to paragraph (a)(2) of this section by a quantity which is the total of production history bases computed pursuant to §§ 1065.92, 1065.93, and 1065.94, whichever is applicable. The result shall be converted to a percentage by multiplying by 100 and rounding to the third decimal place. Such percentage shall be known as the "Class I base percentage."

(b) The Class I base of each producer with a production history base shall be

determined by multiplying his production history base by the "Class I base percentage" and rounding the result to the nearest pound: *Provided*, That with respect to a producer with a production history period of less than 3 years beginning after the effective date of this provision, 20 percent shall be subtracted from the result of the preceding calculation, and: *Provided further*, That such 20 percent reduction shall be effective continuously with respect to a producer for a period not exceeding 36 months from the beginning of such production history period. With respect to a producer who has acquired production history base by transfer, such 20 percent reduction shall apply only to base exclusive of that acquired by transfer.

§ 1065.96 Transfer of bases.

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

(a) A transfer of base means the disposal of Class I base and production history base by a transferor and the associated acquisition of Class I base and production history base by transferee. Disposal of base means disposal of Class I base and disposal of a proportionate amount of the production history base held by the transferor. Acquisition of base means the acquisition of Class I base and an amount of production history base which is the quantity of Class I base acquired multiplied by the reciprocal of the Class I base percentage. A transfer may be made only to a person who is a dairy farmer. The amount of Class I base credited to the transferee shall be two-thirds of the Class I base disposed of by the transferor: *Provided*, That such one-third reduction shall not apply to:

(1) An intrafamily transfer (including transfer to an estate and from an estate to a member of the immediate family);

(2) The division of base except as provided pursuant to paragraph (h) of this section; and

(3) The combining of bases of two or more producers for purpose of joint enterprise operated by such producers.

(b) A person receiving base by transfer must notify the market administrator in writing of the name of the producer transferring the base, the effective date of the transfer and the amount of base to be transferred. Application for transfer must be made to the market administrator on forms approved by the market administrator and signed by the transferor, his heirs, executor, or trustee and by the person to whom such base is to be transferred;

(c) Subject to paragraphs (a) and (k) of this section, transfers of an entire base or transfers other than pursuant to paragraph (d) of this section may not be made except in the case of:

(1) Death of the baseholder;

(2) Intrafamily transfers;

(3) Termination of the dairy enterprise of base holder;

(4) The baseholder entering the armed services;

(5) Transfer to a partnership or corporation in which the transferor has a material management interest; and

(6) Transfers allowed as a hardship adjustment.

(d) Subject to paragraphs (a) and (k) of this section, a producer may transfer a portion of his Class I base, in multiples of 150 pounds, as follows:

(1) Not more than the larger of 150 pounds or 30 percent of the Class I base assigned to a producer on the most recent of the effective date, February 1 of any year, or the initial assignment of base to such producer, may be disposed of by transfer prior to the February 1 following.

(2) A jointly held base may be divided among individuals engaged in a joint enterprise.

(e) Subject to paragraph (k) of this section a transfer of an entire base may be made effective on any day of the month if application for such transfer is filed with the market administrator within 5 days thereafter. Otherwise such transfer shall be effective on the first day of the month following that in which application is made;

(f) A transfer of a portion of a base shall be effective the first day of the month following that in which application for which such transfer is made to the market administrator;

(g) A base which is jointly held or in a partnership may be transferred subject to limitations otherwise provided in this section only upon application signed by each joint holder or partner, his heirs, executors, or trustee and by the person to whom such base is to be transferred;

(h) A base which has been established by two or more persons operating a dairy farm jointly or as a partnership may be divided among the joint holders or partners if written notification of the agreed division of base signed by each joint holder or partner, his heirs, executor, or trustee, is filed with the market administrator prior to the first day of the month for which such division is to be effective: *Provided*, That, however, a one-third lapse of base shall apply to base to the extent it constitutes a transfer by a person leaving a joint enterprise of base held by such person as an individual not more than 12 months prior to leaving such enterprise.

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

(j) In the case of an intrafamily transfer (including transfers to an estate and from an estate to a member of the immediate family), or any transfer not subject to the one-third lapse, all restrictions on transferring base applicable to the transferor producer shall also apply to the transferee;

(k) A producer who receives a base pursuant to § 1065.92 (c), (d), (e), (f), or (g) or § 1065.93 (a), (b), or (c) may not transfer such base, for 1 year from the date of receipt, provided, however, that such limitation shall not apply to:

(1) Intrafamily transfers; or

(2) The quantity of base such producer acquires by transfer.

(l) If a base is held by a corporation, a change in ownership of the stock which transfers control to a new person or persons other than a member of the immediate family of the person transferring such stock will be considered to result in a transfer of base and in this case compliance with all base rules affecting transfers will be required: *Provided*, That if the transferor(s) is the sole holder of the stock and transfers such stock to a member or members of the immediate family, there will be no lapse of base.

(m) A dairy farmer who has ceased deliveries of producer milk because he is delivering milk to a plant formerly a pool plant that no longer has pool plant qualification shall not be permitted to dispose of Class I base.

§ 1065.97 Miscellaneous base rules.

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

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

(b) As soon as production history bases and Class I bases are computed by the market administrator, notice of the amount of each producer's production history base and Class I base shall be given by the market administrator to the producer, to the handler receiving such producer's milk if the producer is not a member of a qualified cooperative association, and to the cooperative association of which the producer is a member;

(c) As a condition for designation as a producer-handler pursuant to § 1065.10, any person (including any member of the immediate family of such a person, any affiliate of such a person or any business of which such a person is a part) who has held Class I base any time during the 12-month period prior to such designation shall forfeit the maximum amount of Class I and production history base held at any time during such 12-month period; and

(d) In assigning Class I base to a producer, the market administrator shall round such base to the nearest pound.

§ 1065.98 Hardship provisions.

Requests of producers for relief from hardship or inequity arising under the provisions of §§ 1065.92 through 1065.97 will be subject to the following:

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

(1) He was not issued a Class I base;
(2) His production history base is not appropriate because of unusual conditions during the base-earning period such as loss of building, herds, or other facilities by fire, flood or storms, official quarantine, disease, pesticide residue, condemnation of milk, military service of the producer or his son;
(3) Loss or potential loss of Class I base pursuant to § 1065.97(a);
(4) Loss or potential loss of Class I base because of underdeliveries pursuant to § 1065.94(a)(3).
(5) Inability to transfer base.

(b) The producer shall file with the market administrator a request in writing for review of hardship or inequity not later than 45 days after notice pursuant to § 1065.97(b) with respect to requests pursuant to paragraph (a) (1) or (2) of this section, or not later than 45 days after the occurrence with respect to request pursuant to paragraph (a) (3), (4), or (5) of this section, setting forth:
(1) Conditions that caused the alleged hardship or inequity;
(2) The extent of the relief or adjustment requested;
(3) The basis upon which the amount of adjustment requested was determined; and
(4) Reasons why the relief or adjustment should be granted.

(c) One or more producer base committees shall be established and function as follows:
(1) Each producer base committee shall consist of five producers appointed by the market administrator;
(2) Each committee shall review the requests for relief from hardship or inequity referred to it by the market administrator at a meeting in which the market administrator or his representative serves as recording secretary and at which the applicant may appear in person if he so requests.
(3) Recommendations with respect to each such request shall be endorsed at the meeting by at least three committee members and shall:
(i) With respect to requests pursuant to paragraph (a) (1), (3), (4), or (5) of this section, grant or adjust production history bases and average daily producer milk deliveries for prior years where it appears appropriate, delay forfeiture of Class I base, restore forfeited base or reduced average daily producer milk deliveries where appropriate, and permit transfer of base not otherwise possible under the order provisions.
(ii) With respect to requests pursuant to paragraph (a)(2) of this section, either reject the request or provide adjustment in the form of additional production history base and average daily producer milk deliveries for prior years where it appears appropriate and the effective date thereof of such adjustment. In considering such requests the loss of milk production due to the following shall not be considered a basis for hardship adjustment:
(a) Loss of milk due to mechanical failure of farm tank or other farm equipment; and
(b) Inability to obtain adequate labor to maintain milk production, except that hardship adjustment may be granted in the case of a producer or the son of a producer who entered into military service directly from employment in milk production;
(4) Recommendation of the producer base committee shall:
(i) If to deny the request, be final upon notification to the producer, subject only to appeal by the producer to the Director; Dairy Division, within 45 days after such notification; or
(ii) If to grant the request in whole or in part, be transmitted to the Director, Dairy Division, and shall become final unless vetoed by such Director within 15 days after transmitted.
(5) Committee members shall be reimbursed by the market administrator from the funds collected under § 1065.85 for their services at $30 per day or portion thereof, plus necessary travel and subsistence expense incurred in the performance of their duties as committee members.

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

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(a)(5): *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(a)(5).

§ 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(a)(5) 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 ex-

ceed 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(a)(5).

(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(a)(5) 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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1068.5 [Reserved]
1068.6 [Reserved]
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ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

1068.85 Assessment for order administration.
1068.86 Deduction for marketing services.

AUTHORITY: The provisions of this Part 1068 issued under secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

GENERAL PROVISIONS

§ 1068.1 General provisions.

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

DEFINITIONS

§ 1068.2 Minneapolis-St. Paul, Minn., marketing area.

"Minneapolis-St. Paul, Minn., marketing area" (referred to in this part as the "marketing area") means all the territory within the boundaries of the townships and counties listed below. The marketing area shall include all territory that is now, or in the future, occupied by Government (municipal, State, or Federal) reservations, installations, institutions, or other similar establishment if any part of such territory is within the designated geographical limits of the marketing area.

MINNESOTA COUNTIES

Anoka.	Mille Lacs.
Benton.	Pine.
Carver.	Ramsey.
Chisago.	Renville.
Dakota.	Scott.
Hennepin.	Sherburne.
Isanti.	Sibley.
Kanabec.	Stearns.
Kandiyohi.	Washington.
McLeod.	Wright.
Meeker.	

WISCONSIN COUNTIES

In Pierce County, the townships of:

Clifton.	River Falls.

In St. Croix County, the townships of:

Hudson.	Stanton.
Kinnickinnic.	Star Prairie.
Richmond.	Troy.
St. Joseph.	Warren.
Somerset.	

§ 1068.3 Route disposition.

"Route disposition" means any delivery either inside or outside the marketing area (including disposition by a vendor or from a plant store or from vending machines) of any fluid milk product classified as Class I milk to a wholesale or retail shop, 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 diverted from a pool plant to an other order plant if the other order designates such person as a producer under that order with respect to such milk.

§ 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), pool plants, or inventory at the beginning of the month;

(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 (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.

§ 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;

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

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

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

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

(1) Used to produce:

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

(ii) Butter;

(iii) Any milk product in dry form;

(iv) 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

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

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

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

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

(5) In skim milk in any modified fluid milk product that is in excess of the quantity of skim milk in such product that was included within the fluid milk product definition pursuant to § 1068.15; and

(6) In shrinkage assigned pursuant to § 1068.41(a) to the receipts specified in § 1068.41(a)(2) and in shrinkage specified in § 1068.41 (b) and (c).

§ 1068.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1068.30, the market administrator shall determine the following:

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

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

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

(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 milk 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 ut ization 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 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 shall be increased (increasing Class III first to the extent permitted by the handler's total Class III utilization at his other pool plants) by an amount equal to such 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 other pool plants of the handler shall be adjusted to the extent possible in the reverse direction by a like amount. Such adjustment shall be made at the other plants in sequence beginning with the plant having the least minus location adjustment:

(*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;

(*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) 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, 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 any class pursuant to this subparagraph exceed the pounds of

skim milk remaining in such class, the pounds of skim milk in such class shall be increased by an amount equal to such quantity to be subtracted and the pounds of skim milk in the other classes (beginning with the higher-priced class) shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at other pool plants of the handler shall be adjusted to the extent possible in the reverse direction by a like amount. Such adjustment shall be made at the other plants in sequence beginning with the plant having the least minus location adjustment;

(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) and (iii) 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;

(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; and

(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 any class that exceeds the pounds of skim milk remaining in such class, the pounds of skim milk in such class shall be increased by an amount equal to such quantity to be subtracted and the pounds of skim milk in the other classes (beginning with the higher-priced class) shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at other pool plants of the handler shall be adjusted to the extent possible in the reverse direction by a like amount. Such adjustment shall be made at the other plants in sequence beginning with the plant having the least minus location adjustment:

(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 § 1068.44(a)(14) and the corresponding step of § 1068.44(b).

§ 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 pro-

ducers' 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;

(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 § 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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ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

1069.85 Assessment for order administration.
1069.86 Deduction for marketing services.

AUTHORITY: The provisions of this Part 1069 issued under secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

GENERAL PROVISIONS

§ 1069.1 General provisions.

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

DEFINITIONS

§ 1069.2 Duluth-Superior marketing area.

"Duluth-Superior marketing area", hereinafter called the "marketing area", means all of the territory within Carlton County and the city of Duluth, in the State of Minnesota; and all of the territories within the counties of Ashland, Bayfield, and Douglas, in the State of Wisconsin.

§ 1069.3 Route disposition.

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

§ 1069.4 [Reserved]

§ 1069.5 Distributing plant.

"Distributing plant" means a plant in which any Grade A fluid milk product is pasteurized or packaged and from which there is route disposition during the month in the marketing area.

§ 1069.6 Supply plant.

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

§ 1069.7 Pool plant.

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

(a) Any plant, hereinafter referred to as a "distributing pool plant", in which fluid milk products are pasteurized or packaged and from which there is route disposition during the month, except filled milk, equal to 50 percent or more of total receipts of Grade A milk at such plant from dairy farmers, from other plants, and from cooperative associations in their capacity as handlers and from which there is route disposition, except filled milk, in the marketing area equal to 10 percent or more of such total receipts: *Provided*, That such route disposition (not including filled milk) in the marketing area averages at least 500 pounds per day.

(b) Any plant, hereinafter referred to as a "supply pool plant", from which during the month 50 percent or more of its supply of Grade A milk from dairy farmers is moved to a distributing pool plant(s): *Provided*, That any supply plant which has qualified as a pool plant in each of the months of September, October, and November, shall be a pool plant for each of the following months of December through August unless written request for nonpool status is furnished in advance to the market administrator.

(c) A plant(s) (1) which is approved by a duly constituted health authority for the handling of Grade A milk, (2) which is operated by a cooperative association, and (3) from which the quantity of milk transferred by the association to plants specified in paragraph (a) of this section or delivered directly from the farm to such plants is equal to at least the following percentages, in the months indicated, of the quantity of Grade A milk delivered by all producers who are members of such association:

Month	Minimum percentage
September, October, November	40
April, May, June	20
All other months	30

The association shall furnish written notice to the market administrator specifying the plant(s) to be qualified pursuant to this paragraph (c) 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 diverted from a pool plant to an other order plant if the other order designates such person as a producer under that order with respect to such milk.

§ 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), pool plants, or inventory at the beginning of the month;

(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 (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.

§ 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 informa-

tion 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;

(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) 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

(v) 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;

(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;

(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 milk 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 shall be increased (increasing Class III first to the extent permitted by the handler's total Class III utilization at his other pool plants) by an amount equal to such 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 other pool plants of the handler shall be adjusted to the extent possible in the reverse direction by a like amount. Such adjustment shall be made at the other plants in sequence beginning with the plant having the least minus location adjustment:

(*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;

(*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 thir 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) 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, 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 any class pursuant to this subparagraph exceed the pounds of skim milk remaining in such class, the pounds of skim milk in such class shall be increased by an amount equal to such quantity to be subtracted and the pounds of skim milk in the other classes (beginning with the higher-priced class) shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at other pool plants of the handler shall be adjusted to the extent possible in the reverse direction by a like amount. Such adjustment shall be made at the other plants in sequence beginning with the plant having the least minus location adjustment;

(12) Subtract in the manner specified below from the pounds of skim milk re-

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

(i) Subject to the provisions of paragraph (a)(12)(ii) and (iii) 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 § 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;

(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; and

(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 any class that exceeds the pounds of skim milk remaining in such class, the pounds of skim milk in such class shall be increased by an amount equal to such quantity to be subtracted and the pounds of skim milk in the other classes (beginning with the higher-priced class) shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at other pool plants of the handler shall be adjusted to the extent possible in the reverse direction by a like amount. Such adjustment shall be made at the other plants in sequence beginning with the plant having the least minus location adjustment;

(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 § 1069.44(a)(14) and the corresponding step of § 1069.44(b).

§ 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 dif-

ferential 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 han-

dler 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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AUTHORITY: The provisions of this Part 1070 issued under secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

GENERAL PROVISIONS

§ 1070.1 General provisions.

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

DEFINITIONS

§ 1070.2 Cedar Rapids-Iowa City marketing area.

"Cedar Rapids-Iowa City marketing area", called the "marketing area" in this part, means all the territory within the corporate limits of the cities of Cedar Rapids and Iowa City, both in the State of Iowa.

§ 1070.3 [Reserved]

§ 1070.4 [Reserved]

§ 1070.5 Distributing plant.

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

§ 1070.6 Supply plant.

"Supply plant" means a plant from which Grade A milk or skim milk is shipped during the month to a pool plant qualified pursuant to § 1070.7.

§ 1070.7 Pool plant.

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

(a) A distributing plant from which a volume of Class I milk, except filled milk, equal to not less than 35 percent of the Grade A milk received at such plant from dairy farmers and from other plants is disposed of during the month on routes (including routes operated by vendors) or through plant stores to retail or wholesale outlets (except pool plants) and not less than 15 percent of such receipts are so disposed of to such outlets in the marketing area.

(b) A supply plant from which the volume of fluid milk products, except filled milk, shipped during the month to pool plants qualified pursuant to paragraph (a) of this section is not less than 35 percent of the Grade A milk received at such plant from dairy farmers during such month: *Provided*, That if such shipments are not less than 50 percent of the receipts of Grade A milk at such plant during the immediately preceding period of September through November, such plant may, upon written application to the market administrator on or before March 1 of any year, be designated as a pool plant for the months of March through June of such year.

(c) A plant (1) which is approved by a duly constituted health authority for the handling of Grade A milk; (2) which is operated by a cooperative association; and (3) from which the milk transferred by the association to plants of other handlers specified in paragraph (a) of this section plus that delivered by such association pursuant to paragraph (d) of this section and that delivered directly from the farms of members of such association to such plants is Grade A milk delivered by producers who are members of the association. If written application is filed with the market administrator on or before the 5th day of any month, such plant may be designated a nonpool plant for such month and for any subsequent months, except as provided in paragraph (e) of this section.

(d) A cooperative association with respect to Grade A milk received from dairy farmers at their farms in a tank truck owned or operated by such cooperative association and delivered in such tank truck to a pool plant: *Provided*, That such milk shall be deemed

to have been received by the cooperative association at the location of the pool plant to which it is delivered by the tank truck and such location shall be deemed to be the location of such cooperative association in its capacity as the operator of a pool plant.

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

(1) A producer-handler plant; and

(2) A plant specified in paragraph (a), (b), (c), or (d) of this section during any month in which such plant would be subject to the classification and pricing provisions of another order issued pursuant to the act unless the disposition of fluid milk products, except filled milk, from such plant to pool plants qualified under this section and to retail and wholesale outlets in the Cedar Rapids-Iowa City marketing area exceeds such disposition to retail and wholesale outlets in such other marketing area and to pool plants regulated by such other order.

§ 1070.8 Nonpool plant.

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

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

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

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

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

§ 1070.9 Handler.

"Handler" means:

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

(b) A cooperative association with respect to producer milk diverted by the association for its account pursuant to § 1070.13;

(c) [Reserved]

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

(e) A producer-handler; and

(f) Any person who operates an other order plant described in § 1070.7(e).

§ 1070.10 Producer-handler.

"Producer-handler" means any person who operates a dairy farm and a distributing plant but who receives no milk from other dairy farmers or from a cooperative association in its capacity as the operator of a pool plant pursuant to § 1070.7(d) and whose disposition of fluid milk products does not exceed that (a) received from a pool plant, (b) processed from milk of his own production, or (c) processed from fluid milk products received from a pool plant.

§ 1070.11 [Reserved]

§ 1070.12 Producer.

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

(b) "Producer" shall not include:

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

(2) Any person with respect to milk produced by him which is diverted to a pool plant from an other order plant if the other order designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to § 1070.44(a)(8)(iii) and the corresponding step of § 1070.44(b); and

(3) Any person with respect to milk produced by him which is diverted from a pool plant to an other order plant if the other order designates such person as a producer under that order with respect to such milk.

§ 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, pool plants, or inventory at the beginning of the month;

(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 (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.

§ 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;

(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) 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

(v) 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;

(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 milk 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 plants' 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 shall be increased (increasing Class III first to the extent permitted by the handler's total Class III utilization at his other pool plants) by an amount equal to such 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 other pool plants of the handler shall be adjusted to the extent possible in the reverse direction by a like amount. Such adjustment shall be made at the other plants in sequence beginning with the plant having the least minus location adjustment:

(*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;

(*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 provsiions of paragraph (a)(11)(i) 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, 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 any class pursuant to this subparagraph exceed the pounds of skim milk remaining in such class, the pounds of skim milk in such class shall be increased by an amount equal to such quantity to be subtracted and the pounds of skim milk in the other classes (beginning with the higher-priced class) shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at other pool plants of the handler shall be adjusted to the extent possible in the reverse direction by a like amount. Such adjustment shall be made at the other plants in sequence beginning with the plant having the least minus location adjustment;

(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) and (iii) 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;

(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; and

(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 any class that exceeds the pounds of skim milk remaining in such class, the pounds of skim milk in such class shall be increased by an amount equal to such quantity to be subtracted and the pounds of skim milk in the other classes (beginning with the higher-priced class) shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at other pool plants of the handler shall be adjusted to the extent possible in the reverse direction by a like amount. Such adjustment shall be made at the other plants in sequence beginning with the plant having the least minus location adjustment;

(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 § 1070.44(a)(14) and the corresponding step of § 1070.44(b).

§ 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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1076.71 Payments to the producer-settlement fund.
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1076.73 Payments to producers and to cooperative associations.
1076.74 Butterfat differential.
1076.75 Plant location adjustments for producers and on nonpool milk.
1076.76 Payments by handler operating a partially regulated distributing plant.
1076.77 Adjustment of accounts.
1076.78 Charges on overdue accounts.

ADMINISTRATIVE ASSESSMENT

1076.85 Assessment for order administration.

AUTHORITY: The provisions of this Part 1076 issued under secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

GENERAL PROVISIONS

§ 1076.1 General provisions.

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

DEFINITIONS

§ 1076.2 Eastern South Dakota marketing area.

"Eastern South Dakota marketing area," hereinafter called the "marketing area," means all of the territory within the counties listed below, including all territory within such counties which is occupied by government (municipal, State or Federal) reservations, installations, institutions, or other establishments:

IOWA COUNTY

Lyon.

MINNESOTA COUNTY

Rock.

SOUTH DAKOTA COUNTIES

Aurora.
Beadle.
Bon Homme.
Brown.
Clark.
Clay.
Codington.
Davison.
Day.
Douglas.
Edmunds.
Hamlin.
Hanson.
Hutchinson.
Jerauld.
Kingsbury.
Lake.
Lincoln.
McCook.
McPherson.
Miner.
Minnehaha.
Moody.
Sanborn.
Spink.
Turner.
Union (except Jefferson Township and the city of North Sioux City and the unorganized territory adjacent thereto).
Walworth.
Yankton.

§ 1076.3 Route disposition.

"Route disposition" means a delivery (including delivery by a vendor or a sale from a plant store, or distribution center) of any fluid milk product classified as Class I milk to retail or wholesale outlets, except a delivery in bulk form to a milk (including filled milk) processing plant. The route disposition of a handler shall be attributed to the processing and packaging plant from which the Class I milk is moved to retail or wholesale outlets without intermediate movement to another processing plant.

§ 1076.4 [Reserved]

§ 1076.5 Distributing plant.

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

§ 1076.6 Supply plant.

"Supply plant" means a plant from which milk or skim milk acceptable to an appropriate health authority for distribution in the marketing area under a Grade A label, is shipped during the month to a pool plant qualified pursuant to § 1076.7(a).

§ 1076.7 Pool plant.

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

(a) A distributing plant from which route disposition, except filled milk, equals not less than 35 percent of the Grade A milk received at such plant from dairy farmers, handlers described in § 1076.9(c), and supply plants and not less than 15 percent of such receipts is disposed of as route disposition, except filled milk, in the marketing area.

(b) A supply plant from which the volume of fluid milk products, except filled milk, shipped during the month to pool plants qualified pursuant to paragraph (a) of this section is not less than 35 percent of the Grade A milk received at such plant from dairy farmers and handlers described in § 1076.9(c) during such month. If such shipments are not less than 50 percent of such receipts during each of the immediately preceding months of September through November, such plant shall be a pool plant for the months of March through June, unless the operator of such plant requests the market administrator in writing that such plant not be a pool plant, such nonpool status to be effective the first month following such notice and such plant shall thereafter be a nonpool plant until it again qualifies as a pool plant on the basis of the shipping requirements set forth in this paragraph.

(c) A plant, other than a distributing plant, operated by a cooperative association if more than 50 percent of the total milk supply of producer members of such cooperative association is shipped to pool distributing plants of other handlers during the month, either directly from the farm or by transfer from the plant of the cooperative association: *Provided*, That if a portion of such association's plant 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, it shall not be considered as part of a pool plant pursuant to this section.

(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 diverted from a pool plant to an other order plant if the other order designates such person as a producer under that order with respect to such milk.

§ 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), pool plants, or inventory at the beginning of the month;

(b) Receipts in packaged form from other plants of products specified in § 1076.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1076.40(b)(1), and products produced at the plant during the same month) from any source which are reprocessed, converted into, or combined with another product in the plant during the month; and

(d) Receipts of any milk product (other than a fluid milk product or a product specified in § 1076.40(b)(1)) for which the handler fails to establish a disposition.

§ 1076.15 Fluid milk product.

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

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

(2) Any milk product not specified in paragraph (a)(1) of this section or in § 1076.40(b) or (c)(1) (i) through (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.

§ 1076.16 Fluid cream product.

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

§ 1076.17 Filled milk.

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

§ 1076.18 Cooperative association.

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

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

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

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

Handler Reports

§ 1076.30 Reports of receipts and utilization.

On or before the 7th day (excluding holidays) after the end of each month, each handler shall report for such month to the market administrator, in the detail and on the forms prescribed by the market administrator, as follows:

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

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

(2) Receipts of milk from handlers described in § 1076.9(c);

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

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1076.40(b)(1); and

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

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

(c) Each handler described in § 1076.9(b) and (c) shall report:

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

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

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

§ 1076.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1076.9 (a), (b), and (c) shall report to the market administrator

his producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer:

(1) His name and address;

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

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

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

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1076.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1076.32 Other reports.

In addition to the reports required pursuant to §§ 1076.30 and 1076.31, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligation under the order.

CLASSIFICATION OF MILK

§ 1076.40 Classes of utilization.

Except as provided in § 1076.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1076.30 shall be classified as follows:

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

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

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

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

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

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

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

(4) Used to produce:

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

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

(iii) Any concentrated milk product in bulk, fluid form;

(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) 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

(v) 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;

(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 milk 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 shall be increased (increasing Class III first to the extent permitted by the handler's total Class III utilization at his other pool plants) by an amount equal to such 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 other pool plants of the handler shall be adjusted to the extent possible in the reverse direction by a like amount. Such adjustment shall be made at the other plants in sequence beginning with the plant having the least minus location adjustment:

(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;

(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) 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, 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 any class pursuant to this subparagraph exceed the pounds of skim milk remaining in such class, the pounds of skim milk in such class shall be increased by an amount equal to such quantity to be subtracted and the pounds of skim milk in the other classes (beginning with the higher-priced class) shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at other pool plants of the handler shall be adjusted to the extent possible in the reverse direction by a like amount. Such adjustment shall be made at the other plants in sequence beginning with the plant having the least minus location adjustment;

(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) and (iii) 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;

(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; and

(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 any class that exceeds the pounds of skim milk remaining in such class, the pounds of skim milk in such class shall be increased by an amount equal to such quantity to be subtracted and the pounds of skim milk in the other classes (beginning with the higher-priced class) shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at other pool plants of the handler shall be adjusted to the extent possible in the reverse direction by a like amount. Such adjustment shall be made at the other plants in sequence beginning with the plant having the least minus location adjustment;

(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 § 1076.44(a)(14) and the corresponding step of § 1076.44(b).

§ 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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1078.86 Deduction for marketing services.

AUTHORITY: The provisions of this Part 1078 issued under secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

GENERAL PROVISIONS

§ 1078.1 General provisions.

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

DEFINITIONS

§ 1078.2 North Central Iowa marketing area.

"North Central Iowa marketing area" (hereinafter called the "marketing area") means all the territory within the boundaries of the city of Osage and the counties of Black Hawk, Bremer, Buchanan, Butler, Cerro Gordo, Chickasaw, Fayette, Floyd, Franklin, Grundy, Hamilton, Hancock, Hardin, Humboldt, Marshall, Tama, Webster, and Wright, all in the State of Iowa, including territory within such boundaries which is occupied by government (Municipal, State, or Federal) reservations, installations, institutions or other establishments.

§ 1078.3 [Reserved]

§ 1078.4 [Reserved]

§ 1078.5 Distributing plant.

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

§ 1078.6 Supply plant.

"Supply plant" means a plant from which milk or skim milk which is acceptable to the appropriate health authority for distribution in the marketing area under a Grade A label is shipped during the month to a pool plant qualified pursuant to § 1078.7.

§ 1078.7 Pool plant.

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

(a) A distributing plant from which a volume of Class I milk, except filled milk, equal to more than an average of 1,000 pounds per day or not less than 15 percent of the Grade A milk received at such plant from dairy farmers and from other plants is disposed of during the month on routes (including routes operated by vendors) or through plant stores to retail or wholesale outlets (except other plants) in the marketing area.

(b) A supply plant for the month in which shipments of milk or skim milk are made to distributing plants which are pool plants on not less than 10 days in any of the months of September, October, and November and on not less than 5 days in other months: *Provided*, That a supply plant which was not a pool plant for each of the immediately preceding months of September, October, and November shall not be a pool plant for any month during which none of the milk or skim milk from such plant would be allocated to Class I milk pursuant to the procedure specified in § 1078.44(a)(13), and the corresponding step of § 1078.44(b) at a distributing plant which is a pool plant.

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

(1) A producer-handler plant; and

(2) A distributing plant or a supply plant during any month in which such plant would be subject to the classification and pricing provisions of another order issued pursuant to the Act unless such plant is qualified as a pool plant pursuant to paragraph (a) or (b) of this section and a greater volume of fluid milk products, except filled milk, is disposed of from such plant to retail or wholesale outlets and to pool plants in the North Central Iowa marketing area than in the marketing area regulated pursuant to such other order.

§ 1078.8 Nonpool plant.

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

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

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

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

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

§ 1078.9 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of one or more distributing or supply plants.

(b) [Reserved]

(c) A cooperative association with respect to Grade A milk received from dairy farmers in a tank truck, the operation of which is under the control of such cooperative association, and delivered in such tank truck to a pool plant: *Provided*, That such milk shall be deemed to have been received directly from producers at the location of the pool plant by the operator of the pool plant to which it is delivered by the tank truck.

§ 1078.10 Producer-handler.

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

§ 1078.11 [Reserved]

§ 1078.12 Producer.

Except as provided in paragraph (b) of this section, "producer" means any person who produces milk in compliance with the Grade A inspection requirements of a duly constituted health authority, and whose milk is (1) received at a pool plant, or (2) diverted from a pool plant to a nonpool plant that is not a producer-handler plant for the account of the operator of the pool plant (i) any day during the months of April through June, and (ii) on not more than one-half the days on which milk was delivered from a farm during any of the months of July through March.

(b) "Producer" shall not include:

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

(2) Any person with respect to milk produced by him which is diverted to a pool plant from an other order plant if the other order designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to § 1078.44(a)(8)(iii) and the corresponding step of § 1078.44(b); and

(3) Any person with respect to milk produced by him which is diverted from a pool plant to an other order plant if the other order designates such person as a producer under that order with respect to such milk.

§ 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), pool plants, or inventory at the beginning of the month;

(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 (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.

§ 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;

(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) 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

(v) 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;

(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 milk 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 paragraphs (a)(2), (7)(v), and (8)(i) of this section which are in excess of the pounds of skim milk determined pursuant to paragraphs (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 shall be increased (increasing Class III first to the extent permitted by the handler's total Class III utilization at his other pool plants) by an amount equal to such 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 other pool plants of the handler shall be adjusted to the extent possible in the reverse direction by a like amount. Such adjustment shall be made at the other plants in sequence beginning with the plant having the least minus location adjustment:

(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;

(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 paragraphs (a)(5) and (7)(i) of this section;

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

(11) Subject to the provisions of paragraph (a)(11)(i) 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, 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 any class pursuant to this subparagraph exceed the pounds of skim milk remaining in such class, the pounds of skim milk in such class shall be increased by an amount equal to such quantity to be subtracted and the pounds of skim milk in the other classes (beginning with the higher-priced class) shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each clas- at this allocation step at other pool plants of the handler shall be adjusted to the extent possible in the reverse direction by a like amount. Such adjustment shall be made at the other plants in sequence beginning with the plant having the least minus location adjustment;

(12) Subject to the provisions of paragraph (a)(12)(i) 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, 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 are in excess of bulk fluid milk products transferred or diverted to such plant:

(i) Should the pounds of skim milk to be subtracted from any class pursuant to this subparagraph exceed the pounds of skim milk remaining in such class, the pounds of skim milk in such class shall be increased by an amount equal to such quantity to be subtracted and the pounds of skim milk in the other classes (beginning with the higher-priced class) shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at other pool plants of the handler shall be adjusted to the extent possible in the reverse direction by a like amount. Such adjustment shall be made at the other plants in sequence beginning with the plant having the least minus location adjustment;

(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 pood 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 § 1078.44(a)(14) and the corresponding step of § 1078.44(b).

§ 1078.45 Market administrator's reports concerning classification.

The market administrator shall make the following reports concerning classification:

(a) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from an other order plant, the class to which such receipts are allocated pursuant to § 1078.44 on the basis of such report, and, thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

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

Class Prices

§ 1078.50 Class prices.

Subject to the provisions of § 1078.52, the class prices for the month per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $1.25.

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

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

§ 1078.51 Basic formula price.

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

§ 1078.52 Plant location adjustments for handlers.

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

(1) "Zone 1" means all the territory in the Iowa counties of Humboldt, Wright, Franklin, Butler, Bremer, Webster, Hamilton, Hardin, Grundy, Black Hawk, and Buchanan.

(2) "Zone 2" means all the territory in the Iowa counties of Marshall, Tama, Linn, and Johnson.

(3) "Zone 3" means all the territory in the Iowa counties of Hancock, Cerro Gordo, Floyd, and Chickasaw and the city of Osage, Iowa.

(4) "Zone 4" means all the territory in Fayette County, Iowa, and the Minnesota counties of Freeborn and Mower.

(b) For milk received from producers at a pool plant located in Zone 2, 3, or 4 and classified as Class I milk, the price specified in § 1078.50(a) shall be adjusted by the following amount:

(1) Zone 2—plus 8 cents.

(2) Zone 3—minus 5 cents.

(3) Zone 4—minus 10 cents.

(c) For milk received from producers at a pool plant located outside Zones 1, 2, 3, and 4 and classified as Class I milk, the price specified in § 1078.50(a) shall be reduced 10 cents and, if the plant is located 65 miles or more by the shortest hard-surfaced highway distance as determined by the market administrator from the city halls of each of the cities of Fort Dodge, Marshalltown, Mason City, and Waterloo, Iowa, shall be reduced an additional 1.5 cents for each 10 miles or fraction thereof in excess of 65 miles that such plant is from the nearest of such city halls.

(d) For purposes of calculating the location adjustment applicable pursuant to this section, fluid milk products which are transferred between pool plants shall be assigned to the Class I milk remaining in the transferee-plant after calculations pursuant to § 1078.44(a)(12) and the corresponding step of § 1078.44(b) that is in excess of receipts at such plant from producers and handlers described in § 1078.9(c), such assignment to transferor-plants to be made first to plants at which a plus location adjustment is applicable, next at which no location adjustment is applicable and then in sequence beginning with the plant at which the least location adjustment would apply.

§ 1078.53 Announcement of class prices.

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

§ 1078.54 Equivalent price.

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

UNIFORM PRICE

§ 1078.60 Handler's value of milk for computing uniform price.

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1078.44 by the applicable class prices and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1078.44(a)(14) and the corresponding step of § 1078.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1078.74, that are applicable at the location of the pool plant;

(c) Add the following:

(1) The amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the pool plant for the current month by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1078.44(a)(9) and the corresponding step of § 1078.44(b); and

(2) The amount obtained from multiplying the difference between the Class III price for the preceding month and the Class II price for the current month by the lesser of:

(i) The hundredweight of skim milk and butterfat subtracted from Class II pursuant to § 1078.44(a)(9) and the corresponding step of § 1078.44(b) for the current month; or

(ii) The hundredweight of skim milk and butterfat remaining in Class III (exclusive of shrinkage) after the computations pursuant to § 1078.44(a)(11) and the corresponding step of § 1078.44(b) for the preceding month, less the hundredweight of skim milk and butterfat specified in paragraph (c)(1) of this section; and

(d) Add or subtract, as the case may be, an amount necessary to correct errors discovered by the market administrator in the verification of reports of such handler of his receipts and utilization of skim milk and butterfat for previous months.

§ 1078.61 Computation of uniform price for each handler.

For each month the market administrator shall compute a uniform price for the producer milk received by each handler as follows:

(a) Add to and subtract from the amount computed pursuant to § 1078.60, the totals of the location adjustments to be made pursuant to § 1078.75;

(b) Add if a deduction was made, or subtract if an addition was made, in computing the uniform price for such handler to the nearest cent for the preceding month the amount of such adjustment; and

(c) Divide the resulting amount by the total hundredweight of producer milk received by such handler. The quotient, adjusted to the nearest cent, shall be the uniform price for such handler for producer milk of 3.5 percent butterfat content received at plants in Zone 1. Uniform prices at plants outside Zone 1 shall be adjusted pursuant to § 1078.75.

§ 1078.62 Announcement of uniform price for each handler and butterfat differential.

The market administrator shall announce publicly on or before:

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

(b) The 10th day after the end of each month the uniform price for each handler for such month.

PAYMENTS FOR MILK

§ 1078.73 Payments to producers and to cooperative associations.

Each handler shall make payment to each producer for milk received from such producer as follows:

(a) On or before the 14th day after the end of each month, for milk received during such month, an amount computed at not less than the uniform price per hundredweight pursuant to § 1078.61, as adjusted pursuant to § 1078.74, plus or minus adjustments for errors made in previous payments to such producer; and less (1) location adjustments pursuant to § 1078.75, (2) deductions for marketing services pursuant to § 1078.86, and (3) proper deductions authorized by such producer: *Provided*, That with respect to producers whose milk was caused to be delivered to such handler by a cooperative association which is authorized to collect payment for such milk the handler shall, if requested by the cooperative association, pay such cooperative association on or before the 12th day after the end of each month an amount equal to the sum of the individual payments otherwise payable to such producers in accordance with this paragraph;

(b) In making the payments to producers pursuant to paragraph (a) of this section, each handler shall furnish each producer or cooperative association from whom he has received milk with a supporting statement in such form that it may be retained by the producer, which shall show for each month:

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

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

(3) The minimum rate or rates at which payment to such producer is required pursuant to the order;

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

(5) The amount or the rate per hundredweight and nature of each deduction claimed by the handler; and

(6) The net amount of payment to such producer or cooperative association.

§ 1078.74 Butterfat differential.

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

§ 1078.75 Plant location adjustments for producers.

The uniform prices for milk received from producers at a pool plant shall be adjusted according to the location of the pool plant at the rates set forth in § 1078.52.

§ 1078.76 [Reserved]

§ 1078.77 Adjustment of accounts.

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

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

§ 1078.85 Assessment for order administration.

As his pro rata share of the expense of administration of the order, each handler shall pay to the market administrator on or before the 15th day after the end of the month 4 cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to (a) producer milk, (b) other source milk allocated to Class I pursuant to § 1078.44 (a) (7) and (11) and the corresponding steps of § 1078.44(b), and (c) Class I milk disposed of from a partially regulated distributing plant on routes in the marketing area that exceeds the hundredweight of Class I milk received during the month at such plant from pool plants and other order plants.

§ 1078.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler in making payments to each producer pursuant to § 1078.73, shall deduct 5 cents per hundredweight or such lesser amount as the Secretary may prescribe with respect to all milk received by such handler from such producer (except such handler's own farm production) during the month, and shall pay such deductions to the market administrator not later than the 15th day after the end of the month. Such money shall be used by the market administrator to verify or establish weights, samples, and tests of milk received by handlers from such producers during the month and to provide such producers with market information. Such services shall be performed in whole or in part by the market administrator or by an agent engaged by and responsible to him.

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

PART 1079—MILK IN DES MOINES, IOWA, MARKETING AREA

Subpart—Order Regulating Handling

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1079.86 Deduction for marketing services.

AUTHORITY: The provisions of this Part 1079 issued under secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

GENERAL PROVISIONS

§ 1079.1 General provisions.

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

§ 1079.2 Des Moines, Iowa, marketing area.

"Des Moines, Iowa, marketing area" (hereinafter called the "marketing area"), means all the territory within the boundaries of the city of Grinnell and the counties of Adair, Appanoose, Bonne, Clarke, Dallas, Decatur, Greene, Guthrie, Jasper, Lucas, Madison, Mahaska, Marion, Monroe, Polk, Story, Union, Warren, Wappello, and Wayne, all in the State of Iowa, including territory within such boundaries which is occupied by government (municipal, State or Federal) reservations, installations, institutions, or other establishments.

§ 1079.3 [Reserved]

§ 1079.4 [Reserved]

§ 1079.5 Distributing plant.

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

§ 1079.6 Supply plant.

"Supply plant" means a plant from which milk or skim milk which is acceptable to the appropriate health authority for distribution in the marketing area under a Grade A label is shipped during the month to a pool plant qualified pursuant to § 1079.7.

§ 1079.7 Pool plant.

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

(a) A distributing plant from which a volume of Class I milk, except filled milk, equal to not less than 35 percent of the Grade A milk received at such plant from dairy farmers and from other plants is disposed of during the month on routes (including routes operated by vendors) or through plant stores to re-

tail or wholesale outlets (except pool plants) and not less than 15 percent of such receipts or an average of not less than 7,000 pounds per day, whichever is less, is so disposed of to such outlets in the marketing area.

(b) A supply plant from which the volume of fluid milk products, except filled milk, shipped during the month to pool plants qualified pursuant to paragraph (a) of this section is equal to not less than 35 percent of the Grade A milk received at such plant from dairy farmers during such month: *Provided*, That if such shipments are not less than 50 percent of the receipts of Grade A milk directly from dairy farmers at such plant during the immediately preceding period of September through November, such plant shall be a pool plant for the months of March through June, unless written application is filed with the market administrator on or before the 15th day of any of the months of March, April, May, or June to be designated a nonpool plant for such month and for each subsequent month through June of the same year.

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

(1) A producer-handler plant;

(2) A distributing plant or a supply plant during any month in which such plant would be subject to the classification and pricing provisions of another order issued pursuant to the Act unless the disposition of fluid milk products, except filled milk, from such plant to pool plants qualified pursuant to this section and to retail and wholesale outlets in the Des Moines, Iowa, marketing area exceeds such disposition to retail and wholesale outlets in such other marketing area and to pool plants regulated by such other order except in the following circumstances:

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

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

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

§ 1079.8 Nonpool plant.

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

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

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

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

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

§ 1079.9 Handler.

"Handler" means:

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

(b) Any cooperative association with respect to the milk of producers diverted pursuant to § 1079.13 by the association for the account of such association;

(c) [Reserved]

(d) Any person as the operator of a partially regulated distributing plant.

§ 1079.10 Producer-handler.

"Producer-handler" means any person who operates a dairy farm and a distributing plant but who receives no milk from other dairy farmers or from sources other than pool plants and whose disposition of fluid milk products does not exceed that (a) received from a pool plant, (b) processed from milk of his own production, or (c) processed from fluid milk received from a pool plant.

§ 1079.11 [Reserved]

§ 1079.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk in compliance with the Grade A inspection requirements of a duly constituted health authority which milk is received by a handler as producer milk.

(b) "Producer" shall not include:

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

(2) Any person with respect to milk produced by him which is diverted to a pool plant from an other order plant if the other order designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to § 1079.44 (a)(8)(iii) and the corresponding step of § 1079.44(b); and

(3) Any person with respect to milk produced by him which is diverted from a pool plant to an other order plant if the other order designates such person as a producer under that order with respect to such milk.

§ 1079.13 Producer milk.

"Producer milk" means the skim milk and butterfat contained in Grade A milk received at a pool plant directly from a producer: *Provided*, That milk diverted under the conditions set forth in paragraphs (a), (b), and (c) of this section from a pool distributing plant to a nonpool plant that is not a producer-handler plant for the account of either the operator of the pool distributing plant or a cooperative association shall also be producer milk and shall be deemed to have been received by the diverting handler at the plant to which diverted.

(a) A handler described in § 1079.9(b) may divert for its account without limit during the other days of the month the milk of any member producer whose milk is received at a pool distributing plant for at least one delivery during the month. The total quantity of milk so diverted may not exceed 50 percent in September through March and 100 percent in April through August of the larger of the following amounts: (1) The total quantity of its member milk received at all pool distributing plants during the current month, or (2) the average daily quantity of its member milk received at all pool distributing plants during the previous month multiplied by the number of days in the current month.

(b) A handler in his capacity as the operator of a pool distributing plant may divert for his account the milk of any producer other than a member of a cooperative association which has diverted milk pursuant to paragraph (a) of this section whose milk is received at his pool distributing plant for at least one delivery during the month without limit during the other days of such month. However, the total quantity of milk so diverted may not exceed 50 percent in September through March and 100 percent in April through August of the larger of the following amounts: (1) The total quantity of producer milk received at such plant during the current month from producers who are not members of a cooperative association which has diverted milk pursuant to paragraph (a) of this section, or (2) the average daily quantity of producer milk received at such plant during the previous month multiplied by the number of days in the current month from producers who are not members of a cooperative association which has diverted milk in the current month pursuant to paragraph (a) of this section.

(c) Any milk so diverted by the operator of a pool plant or by a handler described in § 1079.9(b) in excess of the limits prescribed pursuant to paragraphs (a) and (b) of this section shall not be producer milk and if the diverting handler fails to designate the dairy farmers whose milk is not producer milk,

then no milk diverted by such handler during the month shall be producer milk.

§ 1079.14 Other source milk.

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

(a) Receipts of fluid milk products and bulk specified in § 1079.40(b)(1) from any source other than producers, pool plants, or inventory at the beginning of the month;

(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 (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.

§ 1079.16 Fluid cream product.

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

§ 1079.17 Filled milk.

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

§ 1079.18 Cooperative association.

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

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

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

HANDLER REPORTS

§ 1079.30 Reports of receipts and utilization.

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

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

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

(2) [Reserved]

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

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1079.40(b)(1); and

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

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

(c) Each handler described in § 1079.9 (b) shall report:

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

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

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

§ 1079.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1079.9 (a) and (b) shall report to the market administrator his producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer:

(1) His name and address;

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

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

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

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1079.76 (b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1079.32 Other reports.

(a) Each handler, except a producer-handler, shall report to the market administrator in detail and on forms prescribed by the market administrator:

(1) On or before the first day other source milk is received in the form of any fluid milk product at his pool plant his intention to receive such product, and on or before the last day such product is received, his intention to discontinue receipt of such product; and

(2) Prior to his diversion of producer milk to a nonpool plant, his intention to divert such milk, the proposed date or dates of such diversion and the plant to which such milk is to be diverted.

(b) In addition to the reports required pursuant to §§ 1079.30 and 1079.31 and paragraph (a) of this section, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligation under the order.

CLASSIFICATION OF MILK

§ 1079.40 Classes of utilization.

Except as provided in § 1079.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1079.30 shall be classified as follows:

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

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

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

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

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

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

(3) In bulk fluid milk products and bulk fluid cream products disposed of to any commercial food processing establishment (other than a milk or filled

milk plant) at which food products (other than milk products and filled milk) are processed and from which there is no disposition of fluid milk products or fluid cream products other than those received in consumer-type packages; and

(4) Used to produce:

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

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

(iii) Any concentrated milk product in bulk, fluid form;

(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) 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

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

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

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

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

(5) In skim milk in any modified fluid milk product that is in excess of the quantity of skim milk in such product that was included within the fluid milk product definition pursuant to § 1079.15; and

(6) In shrinkage assigned pursuant to § 1079.41(a) to the receipts specified in § 1079.41(a)(2) and in shrinkage specified in § 1079.41 (b) and (c).

§ 1079.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1079.30, the market administrator shall determine the following:

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

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

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

(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 milk transferred to other plants that is not in excess of the respective amounts of skim milk and butterfat to which percentages are applied in paragraph (b) (1), (4), (5), and (6) of this section; and

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1079.9(b), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

§ 1079.42 Classification of transfers and diversions.

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

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant after the computations pursuant to § 1079.44(a)(12) and the corresponding step of § 1079.44(b);

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1079.44(a)(7) or the corresponding step of § 1079.44(b), the skim milk or butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor-handler received during the month other source milk to be allocated pursuant to § 1079.44(a)(11) or (12) or the corresponding steps of § 1079.44(b), the skim milk or butterfat so transferred, up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant.

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

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

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

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

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

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

classes shall be classified as Class III milk; and

(6) If the form in which any fluid milk product that is transferred to an other order plant is not defined as a fluid milk product under such other order, classification under this paragraph shall be in accordance with the provisions of § 1079.40

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

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

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

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

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

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

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

(*a*) The transferor-handler or divertor-handler claims such classification in his report of receipts and utilization filed pursuant to § 1079.30 for the month within which such transaction occurred; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 1079.43 General classification rules.

In determining the classification of producer milk pursuant to to § 1079.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1079.30 and shall compute separately for each pool plant and for each cooperative association with respect to milk for which it is the handler pursuant to § 1079.9(b) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1079.40, 1079.41, and 1079.42;

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

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1079.9(b) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1079.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk for each handler described in § 1079.9(a) for each of his pool plants separately and of each handler described in § 1079.9(b) by allocating the handler's receipts of skim milk and butterfat to his utilization as follows:

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

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1079.41(b);

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

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

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

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

(4) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 1079.40(b)(1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(5) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1079.40(b)(1) that were in inventory at the beginning of the month in packaged form, but not in excess of the pounds of skim milk remaining in

Class II. This subparagraph shall apply only if the pool plant was subject to the provisions of this subparagraph or comparable provisions of another Federal milk order in the immediately preceding month;

(6) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or a fluid cream product) that is used to produce, or added to, any product specified in § 1079.40(b), but not in excess of the pounds of skim milk remaining in Class II;

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

(i) Other source milk (except that received in the form of a fluid milk product) and, if paragraph (a)(5) of this section applies, packaged inventory at the beginning of the month of products specified in § 1079.40(b)(1) that was not subtracted pursuant to paragraph (a) (4), (5), and (6) of this section;

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

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

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

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

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

(8) Subtract in the order specified below from the pounds of skim milk 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 shall be increased (increasing Class III first to the extent permitted by the handler's total Class III utilization at his other pool plants) by an amount equal to such 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 other pool plants of the handler shall be adjusted to the extent possible in the reverse direction by a like amount. Such adjustment shall be made at the other plants in sequence beginning with the plant having the least minus location adjustment:

(*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;

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

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

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

(9) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 1079.40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to paragraph (a)(5) and (7)(i) of this section;

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

(11) Subject to the provisions of paragraph (a)(11)(i) 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, 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 any class pursuant to this subparagraph exceed the pounds of skim milk remaining in such class, the pounds of skim milk in such class shall be increased by an amount equal to such quantity to be subtracted and the pounds of skim milk in the other classes (beginning with the higher-priced class) shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at other pool plants of the handler shall be adjusted to the extent possible in the reverse direction by a like amount. Such adjustment shall be made at the other plants in sequence beginning with the plant having the least minus location adjustment;

(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) and (iii) 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;

(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; and

(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 any class that exceeds the pounds of skim milk remaining in such class, the pounds of skim milk in such class shall be increased by an amount equal to such quantity to be subtracted and the pounds of skim milk in the other classes (beginning with the higher-priced class) shall be decreased by a like amount. In such case, the

pounds of skim milk remaining in each class at this allocation step at other pool plants of the handler shall be adjusted to the extent possible in the reverse direction by a like amount. Such adjustment shall be made at the other plants in sequence beginning with the plant having the least minus location adjustment;

(13) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products and bulk fluid cream products from another pool plant according to the classification of such products pursuant to § 1079.42(a); and

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

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

(c) The quantity of producer milk in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to § 1079.44(a)(14) and the corresponding step of § 1079.44(b).

§ 1079.45 Market administrator's reports and announcements concerning classification.

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

(a) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1079.44(a)(12) and the corresponding step of § 1079.44(b), estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose.

(b) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from another order plant, the class to which such receipts are allocated pursuant to § 1079.44 on the basis of such report, and, thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

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

(d) On or before the 10th day after the end of each month, report to each cooperative association, which so requests, the percentage of the milk caused to be delivered by the cooperative association or by its members to the pool plant of each handler during the month that was utilized in each class. For the purpose of this report the milk so delivered shall be allocated to each class in the same ratio as all producer milk received at such plant during the month.

Class Prices

§ 1079.50 Class prices.

Subject to the provisions of § 1079.52, the class prices for the month per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $1.40.

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

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

§ 1079.51 Basic formula price.

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

§ 1079.52 Location adjustments for handlers.

(a) For producer milk received at a plant located outside the marketing area, and 60 miles or more by the shortest hard-surfaced highway distance, as measured by the market administrator from the main post offices of Des Moines and Ottumwa, Iowa, which is classified as Class I or assigned Class I location adjustment credit pursuant to paragraph (b) of this section, the price specified in § 1079.50(a) shall be reduced 10 cents, and shall be reduced an additional 1.5 cents for each 10 miles or fraction thereof in excess of 75 miles from the designated post offices.

(b) For pursposes of calculating such adjustment, transfers between pool plants shall be assigned to Class I disposition remaining at the transferee-plant after computations pursuant to § 1079.44(a)(12) and the corresponding step of § 1079.44(b) in excess of 95 percent of receipts of producer milk at such plant, such assignment to be made first to transferor-plants at which no location adjustment credit is applicable and then in sequence beginning with the plant at which the least location adjustment would apply.

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

§ 1079.53 Announcement of class prices.

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

§ 1079.54 Equivalent price.

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

Uniform Price

§ 1079.60 Handler's value of milk for computing uniform price.

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler with respect to each of his pool plants and of each handler described in § 1079.9(b) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1079.44 by the applicable class prices and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1079.44(a)(14) and the corresponding step of § 1079.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1079.74, that are applicable at the location of the pool plant;

(c) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the pool plant or the Class II price, as the case may be, for the current month by the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1079.44(a)(9) and the corresponding step of § 1079.44(b);

(d) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1079.44(a)(7) (i) through (iv) and the corresponding step of § 1079.44(b), excluding receipts of bulk fluid cream products from an other order plant;

(e) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the transferor-plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1079.44 (a)(7) (v) and (vi)

and the corresponding step of § 1079.44 (b); and

(f) Add the amount obtained from multiplying the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1079.44(a)(11) and the corresponding step of § 1079.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

§ 1079.61 Computation of uniform price.

For each month the market administrator shall compute an aggregate value from which to determine the uniform price per hundredweight for producer milk of 3.5 percent butterfat content, f.o.b. plants located within the marketing area, as follows:

(a) Combine into one total the values computed pursuant to § 1079.60 for all pool plants for which the reports prescribed in § 1079.30 for such month were made, except those in default of payments required pursuant to § 1079.71 for the preceding month;

(b) Add an amount equal to the sum of the location adjustment deductions to be made pursuant to § 1079.75;

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

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

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1079.60(f); and

(e) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (d) of this section. The result shall be known as the uniform price for milk received from producers.

§ 1079.62 Announcement of uniform price and butterfat differential.

The market administrator shall announce publicly on or before:

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

(b) The 10th day after the end of each month the uniform price for such month.

Payments for Milk

§ 1079.70 Producer-settlement fund.

The market administrator shall maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made to such fund pursuant to §§ 1079.71, 1079.76, and 1079.77, and out of which he shall make all payments from such fund pursuant to §§ 1079.72 and 1079.77: *Provided*, That the market administrator shall offset the payment due to a handler against payments due from such handler.

§ 1079.71 Payments to the producer-settlement fund.

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

(1) The total value of milk of the handler for such month as determined pursuant to § 1079.60.

(2) The sum of:

(i) The value at the uniform price, as adjusted pursuant to § 1079.75, of such handler's receipts of producer milk; and

(ii) The value at the uniform price applicable at the location of the plant from which received of other source milk for which a value is computed pursuant to § 1079.60(f).

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

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

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

§ 1079.72 Payments from the producer-settlement fund.

On or before the 13th day after the end of each month the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1079.71(a)(2) exceeds the amount computed pursuant to § 1079.71(a)(1): *Provided*, That if the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the necessary funds are available. A handler who has not received the balance of such payments from the market administrator shall not be considered in violation of § 1079.73 if he reduces his payments to producers by not more than the amount of the reduction in payment from the producer-settlement fund.

§ 1079.73 Payments to producers and to cooperative associations.

(a) Each handler shall pay each producer for producer milk for which payment is not made to a cooperative association pursuant to paragraph (b) of this section, as follows:

(1) On or before the last day of each month, for producer milk received during the first 15 days of the month, at not less than the Class III price for the preceding month; and

(2) On or before the 15th day after the end of each month, for producer milk received during such month, an amount computed at not less than the uniform price pursuant to § 1079.61 adjusted pursuant to §§ 1079.74, 1079.75, and 1079.86, and less the payment made pursuant to paragraph (a)(1) of this section.

(b) Each handler shall make payment to a cooperative association for producer milk which it caused to be delivered to such handler, if such cooperative association is authorized to collect such payments for its members and exercises such authority, an amount equal to the sum of the individual payments otherwise payable for such producer milk, as follows:

(1) On or before the 26th day of each month for producer milk received during the first 15 days of the month; and

(2) On or before the 13th day after the end of each month for milk received during such month.

(c) In making the payments for producer milk pursuant to this section, each handler shall furnish each producer or cooperative association from whom he has received milk with a supporting statement in such form that it may be retained by the recipient, which shall show:

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

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

(3) The minimum rate or rates at which payment to the producer is required pursuant to the order;

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

(5) The amount or the rate per hundredweight and nature of each deduction claimed by the handler; and

(6) The net amount of payment to such producer or cooperative association.

§ 1079.74 Butterfat differential.

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

§ 1079.75 Location adjustments for producers and on nonpool milk.

(a) The uniform price for producer milk pursuant to § 1079.61 received at a pool plant or diverted from a pool plant shall be reduced according to the location of the plant of actual receipt at the rates set forth in § 1079.52.

(b) For purposes of computations pursuant to §§ 1079.71 and 1079.72 the uniform price shall be adjusted at the rates set forth in § 1079.52 applicable at the location of the nonpool plant from which the milk was received, except that the adjusted uniform price shall not be less than the Class III price.

§ 1079.76 Payments by handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay on or before the 25th day after the end of the month to the market administrator for the producer-settlement fund the amount computed pursuant to paragraph (a) of this section. If the handler submits pursuant to §§ 1079.30(b) and 1079.31(b) the information necessary for making the computations, such handler may elect to pay in lieu of such payment the amount computed pursuant to paragraph (b) of this section:

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

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

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

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

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

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

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

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

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

(1) Determine the value that would have been computed pursuant to § 1079.60 for the partially regulated distributing plant if the plant had been a pool plant, subject to the following modifications:

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

(ii) Fluid milk products and bulk fluid cream products transferred from the partially regulated distributing plant to a pool plant or an other order plant shall be classified at the partially regulated distributing plant in the class to which allocated at the fully regulated plant. Such transfers shall be allocated to the extent possible to those receipts at the partially regulated distributing plant from pool plants and other order plants that are classified in the corresponding class pursuant to paragraph (b)(1)(i) of this section. Any such transfers remaining after the above allocation which are classified in Class I and for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1079.60 shall be priced at the uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee plant, with such uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

(iii) If the operator of the partially regulated distributing plant so requests, the value of milk determined pursuant to § 1079.60 for such handler shall include, in lieu of the value of other source milk specified in § 1079.60(f) less the value of such other source milk specified in § 1079.71(a)(2)(ii), a value of milk determined pursuant to § 1079.60 for each nonpool plant that is not an other order plant which serves as a supply plant for such partially regulated distributing plant by making shipments to the partially regulated distributing plant during the month equivalent to the requirements of § 1079.7(b) subject to the following conditions:

(*a*) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1079.30(b) and 1079.31(b) similar reports for each such nonpool supply plant;

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

(*c*) The value of milk determined pursuant to § 1079.60 for such nonpool supply plant shall be determined in the same manner prescribed for computing the obligation of such partially regulated distributing plant; and

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

(i) The gross payments by the operator of such partially regulated distributing plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1079.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated;

(ii) If paragraph (b)(1)(iii) of this section applies, the gross payments by the operator of such nonpool supply plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1079.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated ;and

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

§ 1079.77 Adjustment of accounts.

Whenever verification by the market administrator of reports or payments of any handler discloses errors in payments to or from the producer-settlement fund pursuant to §§ 1079.71 and 1079.72, the market administrator shall promptly bill such handler for any unpaid amounts and such handler shall, within 15 days of such billing, make payments to the market administrator of the amount so billed. Whenever verification discloses that payment is due from the market administrator to any handler, the market administrator shall, within 15 days, make such payment to such handler. Whenever verification by the market administrator of the payment by a handler to any producer or to a cooperative association discloses payment of an amount less than is required by § 1079.73 the handler shall make up such payment to the producer or cooperative association not later than the time of making payment next following such disclosure.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

§ 1079.85 Assessment for order administration.

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

(a) Producer milk;

(b) Other source milk allocated to Class I pursuant to § 1079.44(a) (7) and (11) and the corresponding steps of § 1079.44(b), except such other source milk that is excluded from the computa-

tions pursuant to § 1079.60 (d) and (f); and

(c) Class I milk disposed of from a partially regulated distributing plant on routes in the marketing area that exceeds the skim milk and butterfat subtracted pursuant to § 1079.76(a)(2).

§ 1079.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler in making payments to each producer pursuant to § 1079.73 shall deduct 5 cents per hundredweight or such lesser amount as the Secretary may prescribe with respect to producer milk received by such handler (except such handler's own farm production) during the month, and shall pay such deductions to the market administrator not later than the 15th day after the end of the month. Such money shall be used by the market administrator to verify or establish weights, samples, and tests of producer milk and to provide producers with market information. Such services shall be performed in whole or in part by the market administrator or by an agent engaged by and responsible to him.

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

Signed at Washington, D.C., on August 27, 1973.

E. L. PETERSON,
Administrator,
Agricultural Marketing Service.

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PART III

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

■

STATE ADULT EDUCATION PROGRAMS

Guidelines

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

GUIDELINES FOR STATE ADULT EDUCATION PROGRAMS

Pursuant to the authority contained in the Adult Education Act (84 Stat. 159–164, 20 U.S.C. 1201–1211), notice is hereby given that the U.S. Commissioner of Education is establishing guidelines which apply to State plans for Federal assistance under the Adult Education Act. The guidelines will read as set forth below.

The regulations governing such programs were published in the FEDERAL REGISTER, Vol. 38, No. 118, pp. 16133–16138.

Effective date.—These guidelines shall take effect on October 15, 1973.

(Catalog of Federal Domestic Assistance No. 13.400, Adult Education—Grants to States.)

Dated September 7, 1973.

JOHN OTTINA,
U.S. Commissioner of Education.

GUIDELINES

ADULT EDUCATION PROGRAMS

TITLE III, P.L. 91–230

STATE PLAN PROGRAMS

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PART 1—INTRODUCTION

SECTION 1.1 *Scope of guidelines.*—(a) The guidelines contained in this document are recommendations and suggestions for meeting the legal requirements which apply to State plans for Federal assistance under the Adult Education Act. The guidelines are not to be construed as requirements. However, where the guidelines set forth a permissible means of meeting a legal requirement, the guidelines may be relied upon.

(20 U.S.C. 1208; 113 Cong. Rec. 5936, 5939 (daily ed. May 23, 1967); United States v. Jefferson County Board of Education, 372 F. 2d 836, 857 (1966).)

(b) Where a guideline is issued is connection with or affecting a provision in the regulations, the pertinent regulation will be cited after the citation of legal authority for the guideline, in the parentheses following the guideline. For example, if the legal authority for the guideline is section 306(b) of the Act (20 U.S.C. 1205(b)), and the guideline affects Section 166.7 of the regulations (45 CFR 166.7), the following citation will be placed on the line immediately following the guideline (20 U.S.C. 1205(b); 45 CFR 166.7). If no particular section of the regulations is affected, no citation to the Code of Federal Regulations (CFR) will be made.

(20 U.S.C. 1232(a).)

SEC. 1.2 *Applicable statutes and regulations.*—State plans for adult education are to be proposed and conducted in accordance with applicable Federal statutes and regulations. Pertinent provisions include the Adult Education Act (20 U.S.C. 1201–1211), the General Education Provisions Act (20 U.S.C. 1221 et seq.), the Adult Education Regulations (45 CFR, Part 166), the General Provisions for Office of Education Programs (45 CFR, Part 100), and Office of Management and Budget Circular No. A–102. The State educational agency should carefully review the above references prior to preparing the State plan for adult education.

(20 U.S.C. 1201–1211; 20 U.S.C. 1221 et seq.; 45 CFR, Part 166; 45 CFR, Part 100b; and OMB Circulation No. A–102.)

SEC. 1.3 *Purpose of the State plan.*—(a) The State plan is a standard requirement used in connection with several cooperative Federal-State programs. The State plan under the Adult Education Act provides, among other things:

(1) The basis on which the State, through its State educational agency, will qualify to participate in and receive Federal funds for programs under the Adult Education Act;

(2) Assistance in planning, justifying, and organizing the proposed allocation of funds;

(3) A basis for common understanding and communication among the State educational agency, other participating agencies, the U.S. Office of Education, and the program reviewers and auditors; and

(4) A basis for both immediate and long-range planning and for continuous, systematic evaluation.

(b) If local adult education teachers and administrators are involved in developing the plan and it is widely shared with other State and local decisionmakers, it may also serve to facilitate communication and program support.

(20 U.S.C. 1205; 45 CFR 166.11.)

PART 2—ADMINISTRATIVE RECOMMENDATIONS

SEC. 2.1 *Compliance with Civil Rights Act of 1964.*—(a) Federal financial assistance is subject to the regulations in part 80 of this title, issued by the Secretary of Health, Education, and Welfare and approved by the President, to effectuate the provisions of Title VI of the Civil Rights Act of 1964 (Pubic Law 88–352).

(42 U.S.C. 2000d.)

(b) Federal financial assistance is also subject to the provisions of Title IX of the Education Amendments of 1972 (prohibition of sex discrimination), and any regulations issued thereunder.

(Public Law 92–318, Title IX.)

SEC. 2.2 *Submission procedures*—(a) *General.*—Subpart B of the regulations contained at 45 CFR, Part 166 describes certain requirements with regard to submitting the State plan for adult education. Appendix A of those regulations also contains the required cover sheet and State-Federal agreement.

(b) *Transmittal.*—(1) The State educational agency must submit the cover sheet and State-Federal agreement to the Regional Commissioner of Education for his review as required in Appendix A of the regulations. After the Regional Commissioner reviews and approves the documents, he will recommend approval to the U.S. Commissioner of Education. After the U.S. Commissioner has approved the State plan, two copies of the cover sheet and the State-Federal agreement will be returned to the appropriate Regional Office of Education. One approved copy will be returned to the State educational agency.

(2) Although the regulations provide the State agency with the option of attaching the annual program plan to the State-Federal agreement or incorporating by reference and making it available for inspection by the U.S. Commissioner at the State educational agency, attaching the annual program plan has been found to facilitate communication at all levels.

(c) *Preparation of annual program plan.*—In the preparation of the annual program plan for adult education, the following should be observed:

(1) Copy should be typed or duplicated on 8½ x 11" bond paper. It is recommended that tissue not be used for copies.

(2) Each major plan section should begin on a new page.

(3) Each page should carry in the upper right-hand corner the following information.

Plan Section Number .....
State .....

(4) Pages need not be numbered, but the numerical indexing of sections and subsections in the guide should be followed.

(20 U.S.C. 1205; 45 CFR 166.11–.16.)

SEC. 2.3 *Administrative organizations*—(a) *State administrative agency*—(1) *Map.*—It is often helpful for the annual program plan to include a map of the pertinent administrative agencies within the State (for example, local educational agencies) and the geographical areas for which each such administrative agency is responsible. Such a map could assist the State educational agency in assuring that substantial progress can be made with respect to all segments of the adult population and all areas of the State toward carrying out the purpose of the Act and applicable

regulations, particularly when used in conjunction with the adult needs survey referred to in section 3.2 of these guidelines.

(2) *Organizational chart.*—It is also often helpful to include a current organizational chart of the State educational agency in the annual program plan. The chart could reflect the number of people, by title, serving the State educational agency in the adult education program.

(b) *Local and State advisory councils*—(1) *Possible activities.*—Local and State advisory or planning councils can often be a valuable asset, and a description of any involvement of such groups would be appropriate for inclusion in the annual program plan. Such councils may include members of the client group, such as teachers and students. Councils may, for example, be appointed by the State educational agency or local administrative agency. The program plan could describe how such a council might assist in activities such as the following:

(i) Local project design;
(ii) Project review and approval;
(iii) Evaluation and monitoring;
(iv) State plan devleopment;
(v) Dissemination and reporting;
(vi) Policy development; and
(vii) Needs assessment.

(2) *Allowable costs.*—Salaries, wages, and other costs incurred by members serving on such advisory councils for activities such as those listed above which are reasonably related to the State adult education program may be charged to State or local administration, in compliance with regulations contained in 45 CFR, Part 100b, Subpart G.

(20 U.S.C. 1205, 1231d; 45 CFR, Part 100b, Subpart G.)

(c) *Other organizations.*—It is often helpful to hold public hearings and meetings periodically to encourage the participation of any other concerned groups and of members from the general public.

PART 3—ANNUAL PROGRAM PLAN

SEC. 3.1 *Overview of the planning process.*—(a) The following sequence illustrates some of the essential steps in the planning process: (1) Identify adult learning needs; (2) Inventory resources; (3) Establish program priorities; and (4) Allocate resources.

(b) Since the above steps are dependent upon each other, it is important that the developmental process be approached in a sequential manner. The desired end product is an adult education program plan that provides the State educational agency with the philosophy, operating plan, and rationale for funding decisions on an annual basis. The program plan should identify precisely the objectives for the ensuing fiscal year and describe how they will be met. Such a description would include the pertinent program and fiscal considerations required to conduct the program. The intent of such a description is to encourage the State educational agency to chart a plan in advance so that, for example, during the planning process relevant program requirements such as teacher training, curriculum, and instructional materials can be prepared prior to beginning instructional activities.

Since the resources and delivery systems of each State differ, it is realized that the plans will vary and that each State will want to develop a plan that is responsive to the unique requirements of its adult population and educational system.

(c) Subsequent sections of this part will offer guidelines for each of the above steps in the planning process.

(d) Copies of planning charts and forms referred to in these guidelines may be obtained from the Division of Adult Education, U.S. Office of Education, Washington, D.C. 20202.

(20 U.S.C. 1205.)

SEC. 3.2 *Adult learning needs survey.*—(a) It is suggested that a needs survey be taken initially without regard to fiscal constraints or anticipated revenues from State, Federal, or local sources, in order to determine the full extent of adult learning needs in the State. A survey chart, such as that included in adult program planning chart A, may be used by the administrative agency or by the local educational agency to achieve compatibility in identifying the needs and annual program accomplishments.

(b) Charts similar to adult program planning chart A may also be useful for surveying the needs in the two other priority levels established by regulation at section 166.12(b)(8) (grades 4 through 8 and 9 through 12).

(c) Since this survey will affect subsequent decisions, it is suggested that the county breakdown reflected in the 1970 Census also be examined carefully and compared with the survey data. The general social and economic characteristics column of the State Census provides the years of school completed for females and males over 25 years of age according to county. Educational attainment data regarding the age group between 16 and 25 are also available as State summary data.

(d) In addition to the State Census data, the State educational agency might find the following publications useful in preparing the annual program plan:

(1) Adult Education Annual Program Report (OE Form 3058);

(2) Publications of the National Center for Educational Statistics, U.S. Office of Education, concerning adult education data;

(3) Reports of the Systems Development Corporation concerning the longitudinal study of adult basic education students (the final report will be available in the fall of 1973);

(4) Teacher training studies produced by the University of Missouri at Kansas City;

(5) State evaluations;

(6) The Adult Basic Education Evaluation Model produced by Teachers College, Columbia University; and

(7) Regional staff development plan.

(20 U.S.C. 1205.)

SEC. 3.3 *Resource inventory*—(a) *General.*—Compiling an inventory of those resources that can be applied toward meeting the identified learning needs is a next step. At this point in planning it is recommended that fiscal constraints again not be allowed to enter in the planning since this step is designed to encourage the State educational agency to identify resources in each administrative agency that are available or could be made available and the additional resources required to help meet the previously identified learning needs. It is suggested that the State educational agency conduct such planning with regard to such resources as personnel, facilities, instructional materials, and community resources. If this task has already been performed in conjunction with the regional staff development program, the data might be transferred to the annual plan or the staff development plan might be attached or incorporated by reference.

(b) *Personnel.*—In order to clarify the extent of personnel currently available for adult education, and those desired, a chart along the lines of adult program planning chart B might be included in the annual program plan.

(c) *Community resources.*—Experience indicates that the adult education program will succeed in relation to the degree that it utilizes total community resources with a view toward maximizing services required by the individual rather than operating in isolation as a single-purpose adult education program. Of course, if the local applicant can share in the cost of the program, it enables the State to render service to more people. Community resources such as the following should be surveyed to determine their availability for adult instructional programs: Local educational agencies, public libraries, museums, media, transportation, recreation, cultural, business, industry, public health, social security, food stamps, day care, nonprofit organizations, hospitals, correctional institutions, learning centers, colleges or community colleges, technical institutes, and other appropriate organizations. During the planning survey an effort might also be made to identify facilities that are convenient to adult learners and, if possible, adjacent to other services they may require, such as health and welfare services.

(20 U.S.C. 1205.)

SEC. 3.4 *Determining program priorities.*—(a) The State educational agency also faces the task of establishing program priorities and allocating resources. The annual program plan must include a statement of the priorities established, as required by the regulations at section 166.12(b). Such a statement should include a clear description of each of the precise priorities established and should give the rationale for establishing each such priority, relating it to prior steps

in the planning process, such as the needs survey and resource inventory. For example, a priority for classes for migrant adults functioning at the fourth grade level or below might have been identified by the adult needs survey.

(b) It is suggested that the State educational agency formulate and disseminate its policies, procedures, criteria, and priorities in order to guide agencies in applying for program support, consistent with sections 166.12(b) and 166.13 of the regulations.

(c) Every effort should be made to provide a coordinated statewide program which focuses upon the established priorities. However, the State educational agency should also consider the unique priorities of particular applicants. For example, if the learning needs survey indicates that a particular school district or location has a large population of adults that require English as a second language classes to gain employment or meet their adult responsibilities, then the State educational agency might wish to encourage the appropriate agency to submit an application for a special project (as described in section 306(a)(4) of the Act) focusing on this particular program area.

(20 U.S.C. 1205 45 CFR 166.11–.13.)

SEC. 3.5 *Allocating resources*—(a) *Expenditures for administration of State plan and project activities.*—Program planning chart C may be used to assist in allocating resources and prorating expenditures.

(b) *Fiscal resources in relation to the three instructional priorities.*—(1) The State educational agency must consider the instructional priorities provided in section 166.12(b) with regard to the allocation of funds. In many instances it appears that certain geographical areas have been providing substantial instructional services for lower priorities when adequate emphasis has not yet been accorded to higher priority levels within the geographical area. The distribution of resources described in the above regulation is required in accord with the intent of the Act.

(2) Relating these priorities to the major cost categories might also be useful. For example, if the learning needs survey indicates that a substantial proportion of the population in a particular location was functioning below the fourth grade level and the personnel resource inventory reflected a lack of teachers prepared to teach reading at grades 1–4, the State educational agency may want to consider assigning additional teacher training resources at this level. Of course, this procedure could also apply to instructional materials, special projects, and research or demonstration projects.

(20 U.S.C. 1205; 45 CFR 166.11–.13.)

SEC. 3.6 *Program evaluation.*—Program evaluations, as described in 45 CFR 166.13(b)(8), might address the following issues:

(1) To what degree does the plan provide for cooperation with special projects and teacher training grants that may be operating in the State and supported from section 309 resources;

(2) Do the local instructional programs that the State funded reflect the findings of the learning needs survey and agree with the priorities in section 3.5(b);

(3) Do local programs of instruction provide opportunities for State reviews on a recurring basis? This is very important since the State educational agency or Office of Education regional office may be able to provide technical assistance which could strengthen a component;

(4) Is the regional staff development capability employed effectively to assist local programs;

(5) Do evaluations performed by the State educational agency include management concerns such as maintaining adequate financial records and providing for audits and retention of records; and

(6) Has the State-Federal agreement been provided to all participating agencies to apprise them of the State assurances to implement the Act?

(20 U.S.C. 1205; 45 CFR 166.47.)

SEC. 3.7 *Annual program plan format.*—In order to reflect the above suggestions and the requirements contained in the Act and pertinent regulations, State educational agencies may wish to use an annual program plan format such as the following:

(a) *General program goal statements.*—This portion of the plan might contain a brief introductory overview or summary of the general program goals.

(b) *Needs survey and resource inventory.*—This portion of the plan might contain a description of the conclusions of a needs survey and a resource inventory, including information and planning charts such as those discussed in sections 3.2 and 3.3

(c) *Specific program priorities and objectives.*—This portion of the program plan might describe the specific program priorities established in accordance with section 3.4. Examples of such priorities include:

(1) To review project applications to assure their compliance with Federal and State guidelines.

(2) To provide ____ on-site visitations by State agency staff for technical assistance and evaluation.

(3) To provide ____ preservice and in-service training activities.

(4) To formulate a State advisory council which will meet ____ times a year.

(5) To increase adult enrollment in ____ program by ____ percent.

(6) To add ____ new programs during the program year.

(7) To complete required reports by the deadline date.

(d) *Activities and procedures.*—(1) This portion of the program plan might describe the activities and procedures proposed to address each priority or objective. It is suggested that each priority or objective be discussed individually, as follows:

(i) Objective 1: Procedures and activities A, B, and C.

(ii) Objective 2: Procedures and activities X, Y, and Z.

(2) This portion of the program plan might also, where appropriate, utilize the suggestions and planning charts referred to in Section 3.5.

(e) *Evaluation.*—This portion of the annual program plan might include a discussion of evaluation activities, including

(1) Evaluation activities proposed to be conducted in the year for which application is made (See Section 3.6.); and

(2) The extent to which past evaluation activities have indicated strengths and weaknesses in past programs, and how these strengths and weaknesses have affected the design of the proposed activities and procedures.

PART 4—APPLICATIONS AND PROJECT REPORT FORMS

SEC. 4.1 *Application form.*—It would be very helpful for the purpose of aggregating compatible data if all applicants to the State educational agency used application and reporting forms which were comparable. To accomplish this purpose, States may wish to recommend the use of all or portions of a form entitled "Application and Project Report Form," which may be obtained from the Division of Adult Education, U.S. Office of Education, Washington, D.C. 20202.

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