federal register

MONDAY, MARCH 4, 1974

WASHINGTON, D.C.

Volume 39 ■ Number 43

Pages 8147–8307

PART I

HIGHLIGHTS OF THIS ISSUE

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

March 4, 1974—Pages 8147–8307

REMINDERS

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

Rules Going Into Effect Today

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

page no. and date

DoT—New pneumatic tires for vehicles; effective date..... 4087; 2–1–74

FDA—Canned fruits and fruit juices; order to amend quality standard for canned cherries in regard to blemish limitation..... 794; 1–3–74

—Anhydrotetracyclines and 4-epianhydrotetracycline; tests and methods of assay..... 3935; 1–31–74

GSA—Patents; allocation of rights in inventions..... 23787; 9–4–73

ICC—Freight forwarders of household goods; need for greater regulation. 3270; 1–25–74

federal register

Area Code 202 Phone 523–5240

Published daily, Monday through Friday (no publication on Saturdays, Sundays, or on official Federal holidays), by the Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C., Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

The FEDERAL REGISTER provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive orders and Federal agency documents having general applicability and legal effect, documents required to be published by Act of Congress and other Federal agency documents of public interest.

The FEDERAL REGISTER will be furnished by mail to subscribers, free of postage, for $5.00 per month or $45 per year, payable in advance. The charge for individual copies is 75 cents for each issue, or 75 cents for each group of pages as actually bound. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

Contents

(Continued on next page)

List of CFR Parts Affected

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

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

Rules and Regulations

Title 7—Agriculture

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

[Lemon Regulation 628]

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

Limitation of Handling

This regulation fixes the quantity of California-Arizona lemons that may be shipped to fresh market during the weekly regulation period March 3–9, 1974. It is issued pursuant to the Agricultural Marketing Agreement Act of 1937, as amended, and Marketing Order No. 910. The quantity of lemons so fixed was arrived at after consideration of the total available supply of lemons, the quantity of lemons currently available for market, the fresh market demand for lemons, lemon prices, and the relationship of season average returns to the parity price for lemons.

§ 910.928 Lemon Regulation 628.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 910, as amended (7 CFR Part 910), regulating the handling of lemons grown in California and Arizona, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and upon the basis of the recommendations and information submitted by the Lemon Administrative Committee, established under the said amended marketing agreement and order and upon other available information, it is hereby found that the limitation of handling of such lemons, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) The need for this section to limit the quantity of lemons that may be marketed during the ensuing week stems from the production and marketing situation confronting the lemon industry.

(i) The committee has submitted its recommendation with respect to the quantity of lemons it deems advisable to be handled during the ensuing week. Such recommendation resulted from consideration of the factors enumerated in the order. The committee further reports the demand for lemons has improved because of milder weather in some areas and promotional stocking activity prior to the beginning of the Lenten season. Average f.o.b. price was $5.38 per carton the week ended February 23, 1974 compared to $5.30 per carton the previous week. Track and rolling supplies at 120 cars were down 21 cars from last week.

(ii) Having considered the recommendation and information submitted by the committee, and other available information, the Secretary finds that the quantity of lemons 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 rulemaking procedure, and postpone the effective date of this section 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 section is based became available and the time when this section 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 lemons 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 section, 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 lemons; it is necessary, in order to effectuate the declared policy of the act, to make this section 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 February 26, 1974.

(b) *Order.* (1) The quantity of lemons grown in California and Arizona which may be handled during the period March 3, 1974, through March 9, 1974, is hereby fixed at 225,000 cartons.

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

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

Dated: February 27, 1974.

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

[FR Doc.74-5054 Filed 2-28-74;4:07 pm]

Title 9—Animals and Animal Products

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

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

PART 78—BRUCELLOSIS

Subpart D—Designation of Modified Certified Brucellosis Areas, Specifically Approved Stockyards, and Slaughtering Establishments

MODIFIED CERTIFIED BRUCELLOSIS AREAS

This amendment deletes the following areas from the list of areas designated as Modified Certified Brucellosis Areas in 9 CFR 78.13 because it has been determined that such areas no longer come within the definition of § 78.1(i): Muskogee, Pittsburg, and Pottawatomie Counties in Oklahoma.

Accordingly, § 78.13 of said regulations designating Modified Certified Brucellosis Areas is hereby revised to read as follows:

§ 78.13 Modified Certified Brucellosis Areas.

(a) All States of the United States are hereby designated as Modified Certified Brucellosis Areas except Oklahoma.

(b) The following State is hereby designated as a Modified Certified Brucellosis Area except for the counties named:

(1) Oklahoma except Muskogee, Pittsburg, and Pottawatomie Counties.

(Secs. 4–7, 23 Stat. 32, as amended, secs. 1 and 2, 32 Stat. 791–792, as amended; sec. 3, 33 Stat. 1265, as amended; sec. 2, 65 Stat. 693; and secs. 3 and 11, 76 Stat. 130, 132; 21 U.S.C. 111–113, 114a–1, 115, 117, 120, 121, 125, 134b, 134f; 37 FR 28464, 28477, 38 FR 19141, 9 CFR 78.16)

Effective Date. The foregoing amendment shall become effective March 4, 1974.

The amendment imposes certain restrictions necessary to prevent the spread of brucellosis in cattle and relieves certain restrictions presently imposed. It

should be made effective promptly in order to accomplish its purpose in the public interest and to be of maximum benefit to persons subject to the restrictions which are relieved. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

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

Done at Washington, D.C., this 27th day of February 1974.

J. M. HEJL,
Acting Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service.

[FR Doc.74-4923 Filed 3-1-74;8:45 am]

PART 82—EXOTIC NEWCASTLE DISEASE; AND PSITTACOSIS OR ORNITHOSIS IN POULTRY

Areas Quarantined

This amendment quarantines portions of El Paso County in Texas because of the existence of exotic Newcastle disease. Therefore, the restrictions pertaining to the interstate movement of poultry, mynah and psittacine birds, and birds of all other species under any form of confinement, and their carcasses and parts thereof, and certain other articles, from quarantined areas, as contained in 9 CFR Part 82, as amended, will apply to the quarantined areas.

Accordingly, 9 CFR Part 82 is hereby amended in the following respect:

In § 82.3, the introductory portion of paragraph (a) is amended by adding thereto the name of the State of Texas before the reference to "Puerto Rico" and a new paragraph (a)(1) relating to the State of Texas is added to read:

(1) *Texas.* (i) That portion of El Paso County bounded by a line beginning at the junction of Copia Street and the United States-Mexico International boundary line; thence, following Copia Street in a northeasterly direction to Interstate Highway Loop 110; thence, following Interstate Highway Loop 110 in a northeasterly direction to Interstate Highway 10; thence, following Interstate Highway 10 in a southeasterly direction to U.S. Highway 80, also State Highway 375; thence, following U.S. Highway 80, also State Highway 375 in a southwesterly direction to the United States-Mexico International boundary line; thence, following the United States-Mexico International boundary line in a northerly direction to its junction with Copia Street.

(ii) The premises of Walter E. Hirzel (San Elizario Grant), located on Block 9, tract 1B at North Loop Road on Route 1, City of Clint in El Paso County.

(iii) The premises of Robert B. Smith (San Elizario Grant), located on Block 6, tract 3C, at North Loop Road on Route 1, City of Clint in El Paso County.

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

Effective date. The foregoing amendment shall become effective February 27, 1974.

The amendment imposes certain restrictions necessary to prevent the interstate spread of exotic Newcastle disease, a communicable disease of poultry, and must be made effective immediately to accomplish its purpose in the public interest. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

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

Done at Washington, D.C., this 27th day of February 1974.

J. M. HEJL,
Acting Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service.

[FR Doc.74-4922 Filed 3-1-74;8:45 am]

CHAPTER III—ANIMAL AND PLANT HEALTH INSPECTION SERVICE (MEAT AND POULTRY PRODUCTS INSPECTION), DEPARTMENT OF AGRICULTURE

SUBCHAPTER C—MANDATORY POULTRY PRODUCTS INSPECTION

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

Subpart H—Sanitation

POULTRY EVISCERATING FACILITIES

Statement of considerations. On July 27, 1973, there was published in the FEDERAL REGISTER (38 FR 20096; FR Doc. 73-15474) in accordance with the administrative procedure provisions in 5 U.S.C. 553, a notice of proposed rulemaking under the Poultry Products Inspection Act, as amended, to amend § 381.53(f)(4) of the poultry products inspection regulations (9 CFR 381.53(f)(4)). The proposed amendment would permit other acceptable methods to be used in addition to water-flushed troughs to move inedible materials away from poultry eviscerating lines at poultry processing plants subject to the Act. The purpose of this revision was to allow other sanitary methods which might better conserve water and abate pollution. Interested persons were given until September 28, 1973, to submit data, views, or arguments concerning the proposed amendment.

Six comments were received. Of these, four supported the proposal, as written. One suggested that the word "cleaned" be substituted for "flushed" in the second sentence, and one suggested that the phrase "other acceptable facilities" be further defined.

After consideration of these comments, the amendment is hereby issued as proposed, except that the first clause in the second sentence of § 381.53(f)(4) is changed to read "Such troughs or other facilities shall be flushed or cleaned in an acceptable manner." In the first sentence, the phrase "other acceptable facilities" remains undefined, as proposed, since it is desired to provide maximum latitude to plant operators in presenting proposals for facilities in lieu of water-flushed troughs.

It does not appear that further public participation in rulemaking proceedings would make additional relevant information available to the Department. Therefore, under the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that further rulemaking procedures are impracticable and unnecessary. Since the amendment relieves a restriction, under said provisions, it may be made effective less than 30 days after its publication in the FEDERAL REGISTER.

Accordingly § 381.53(f)(4) is amended to read as set forth herein.

(Sec. 14, 71 Stat. 441, as amended, 21 U.S.C. 463; 37 FR 28464, 28477).

This amendment shall become effective March 4, 1974.

Done at Washington, D.C., on February 26, 1974.

G. H. WISE,
Acting Administrator, Animal and Plant Health Inspection Service.

§ 381.53 Equipment and utensils.

* * * * *

(f) * * *

(4) When eviscerated on a conveyor, each carcass shall be suspended and a trough or other acceptable facilities for maintaining proper sanitation shall be provided beneath the conveyor. Such troughs or other facilities shall be flushed or cleaned in an acceptable manner and shall extend beneath the conveyor at all places where processing operations are conducted from the point where the carcass is opened to the point where the viscera have been completely removed.

[FR Doc.74-4921 Filed 3-1-74;8:45 am]

Title 20—Employees' Benefits

CHAPTER III—SOCIAL SECURITY ADMINISTRATION; DEPARTMENT OF HEALTH EDUCATION, AND WELFARE

[Regulations No. 16]

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart B—Eligibility

Subpart E—Payment of Benefits, Overpayments, and Underpayments

On October 19, 1973, there was published in the FEDERAL REGISTER (38 FR 29087) a notice of proposed rule making with proposed amendments to the regulations adding new Subparts B and E to Regulations No. 16. The proposed amendments provide general information and basic guidelines for determining eligibility and making payments in the supplemental security income program for the aged, blind, and disabled. Proposed Subpart B (Eligibilty) will govern the conditions for and limitations on eligibility and the determinations of eligibility and the periods covered by such determinations. Proposed Subpart E (Payment of Benefits, Overpayments, and Underpayments) sets forth the basic criteria regulating the methods and manner of payments including the situations warranting advance payments.

Interested parties were given the opportunity to submit within 30 days, data, views, or arguments with regard to the proposed amendments.

Most of the substantive comments concerning Subpart B were by individuals expressing reservations with respect to the limitation on eligibility due to institutional status. Specifically, they were concerned that no supplemental security income payments would be made to inmates of public institutions. Thus, the State and local government entities are precluded from considering the availability of supplemental security income funds when determining how to meet the cost of care of such aged, blind, and disabled inmates in public institutions. However, the legislative language in title XVI is specific with respect to public institutions and reflects congressional intent to prevent the shift of public institutional programs which are traditionally the responsibility of the State and local governments, to the Federal Government.

Regarding Subpart E, the comments concerned the advance payment provisions. Specifically, concern was expressed over the dollar limitation of the advance, the recoupment of an advance payment when eligibility for the payment is not established, and the need for the Social Security Administration to provide for financial emergencies that arise at times other than when a person initially files for supplemental security income payments. However, the legislative language is specific as to the maximum amount of an emergency advance, the congressional intent that incorrect payments be recovered, and that emergency advance payments can be made only at initial filing.

The regulations as announced under the notice of proposed rule making (38 FR 29087) are adopted with no major changes. Some parts of the regulations were redrafted for clarification purposes, in line with the comments received.

(Sections 1102, 1601, 1602, 1611, 1614, 1631, 1633, 49 Stat. 647, as amended, 86 Stat. 1465, 1466, 1473, 1475, 1476, 1477, 1478; 42 U.S.C. 1302, 1381, 1381a, 1382, 1382c, 1383, 1383b.)

Effective date. These regulations shall be effective March 4, 1974.

(Catalog of Federal Domestic Assistance Program No. 13.807, Supplemental Security Income Program.)

Dated: January 24, 1974.

J. B. CARDWELL,
Commissioner of Social Security.

Approved: February 22, 1974.

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

Part 416 of 20 CFR Chapter III is amended by adding thereto new Subparts B and E to read as follows:

Subpart B—Eligibility

Sec.

AUTHORITY.—Social Security Amendments of 1972, secs. 1102, 1601, 1602, 1611, 1614, 1631, 1633, 86 Stat. 1465, 1466, 1473, 1475, 1476, 1477, 1478 (42 U.S.C. 1302, 1381, 1381a, 1382, 1382c, 1383, 1383b).

Subpart B—Eligibility

§ 416.201 Basic eligibility for benefits.

Every aged, blind, or disabled individual who is determined under title XVI of the Act and the Regulations in this part to be eligible shall be paid benefits by the Secretary. (See Subpart K of this part for requirements with respect to income; Subpart L of this part for requirements with respect to resources; and Subpart I of this part for requirements with respect to disability and blindness.) Except in the case of any individual who for the month of December 1973 was a recipient of aid or assistance under a State plan approved under Title I, X, XIV, or XVI of the Social Security Act, and who was thereby converted to the new title XVI program through review and evaluation of the existing State records, the determination of eligibility shall be based on written statements on appropriate applications or other forms (see Subpart C of this part) and documented evidence.

§ 416.202 Eligibility requirements: General.

For purposes of this part, an aged, blind, or disabled individual is an individual who:

(a) Is 65 years of age or older (as determined under Subpart H of this part), is blind (as determined under Subpart I of this part), or is disabled (as determined under Subpart I of this part), and

(b) Is a resident of the United States, and is either:

(1) A citizen of the United States, or

(2) An alien lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law (including any alien who is lawfully present in the United States as a result of the application of the provisions of section 203(a)(7) or section 212(d)(5) of the Immigration and Nationality Act (8 U.S.C. 1153, 1182)).

§ 416.220 Determination of eligibility: General.

An individual or spouse must furnish such information concerning income (as defined in Subpart K of this part) and resources (as defined in Subpart L of this part) as is necessary to establish eligibility or continuing eligibility for supplemental security income payments under the Act. Eligibility is determined for each calendar quarter for which payments are requested except that, if the initial application (see Subpart C of this part) for benefits is filed in the second or third month of a calendar quarter, such determination is made for each month in such quarter beginning with the month in which such application is filed.

§ 416.221 Determination of eligibility; quarter of filing.

(a) *First month of quarter.*—When an effective application for payments (see Subpart C of this part) is filed in the first month of a calendar quarter, a determination of eligibility and payment amount is made based on all countable income (see Subpart K of this part) received or expected to be received in that quarter.

(b) *Second or third month of quarter.*—When an application is filed in the second or third month of a calendar quarter, the determination of eligibility for those months is made on a monthly basis. The amount of countable income received or expected to be received during the month is deducted from the standard payment amount applicable for that month. Income received in the month or months prior to application is not charged against the applicable payment rate. The period for which an initial determination of eligibility is made begins with the month in which application is effectively filed (see Subpart C) and continues until the scheduled redetermination or until a change in status occurs requiring an earlier redetermination.

§ 416.230 Limitation on eligibility due to failure to file for other benefits.

(a) *General.*—Eligibility for supplemental security income payments is precluded if a recipient or potential recipient fails to apply for other benefits for which such recipient or potential recipient may be eligible.

(b) *Types of other benefits.*—For purposes of this part, other benefits for

which application must be made pursuant to paragraph (a) of this section include any payments classifiable as annuities, pensions, retirement benefits, or disability benefits. Specific examples of types of "other benefits" include but are not limited to veteran's compensation and pensions, retirement, survivors, and disability insurance benefits, workmen's compensation payments, railroad retirement annuities and pensions, unemployment insurance, union pensions, and employers' pensions or annuities.

(c) *Required notice.*—The Administration will notify recipients of their potential eligibility for other benefits and will make appropriate referrals. Written notice specifically identifying such potential eligibility will be given the recipient. Such notice will also state the consequences to the recipient of failure to file for and actively prosecute an application for such other benefits.

(d) *Failure to comply.*—(1) Failure to file for other benefits within 30 days from the date of receipt of notice by the Administration (the recipient shall be presumed to have received the notice within 5 days from the date thereon, unless there is reasonable showing to the contrary), in the absence of a showing of incapacity to do so, or other good cause, will result in ineligibility for supplemental security income payments in the case of initial filing for such payments. Where potential eligibility for other benefits arises after initial eligibility for supplemental security income benefits has been established, failure to file for other benefits shall result in ineligibility for supplemental security income benefits. A determination of ineligibility due to failure to file and take all appropriate steps to obtain such other benefits will result in an overpayment of supplemental security income payments, retroactive to the month of written notification of potential eligibility for such other benefits.

(2) Failure by an individual to actively prosecute a claim for some other benefit, in the absence of a showing of incapacity to do so, or other good cause, will constitute failure to take all appropriate steps to obtain such other benefits. For purposes of this paragraph, "actively prosecute" means that an individual has complied or made every effort to comply with application, evidentiary and any other requirements for eligibility or entitlement under any other program.

(3) Where the individual demonstrates that filing for such other benefits would be futile, the individual will not be required to file, or actively prosecute a claim for other benefits.

§ 416.231 Limitation on eligibility due to institutional status.

(a) *General.*—(1) Except as provided in subparagraph (2) of this paragraph, no person shall be an eligible individual or eligible spouse for purposes of title XVI of the Act with respect to any month if throughout such month the person is an inmate of a public institution.

(2) In any case where an eligible individual or his eligible spouse (if any) is throughout any month, in a hospital (see section 1861(e) of the Act), a skilled nursing facility, (see section 1861(j) of the Act), or intermediate care facility (see section 1905(c) of the Act) receiving payments (with respect to such individual or spouse) under a State plan approved under title XIX (Grants to States for Medical Assistance Programs) of the Act, the payment under title XVI for such individual for such month shall be payable:

(i) At a rate of $300 per year (reduced by the amount of any income not excluded pursuant to Subpart K of this part) in the case of an eligible individual who does not have an eligible spouse;

(ii) At the sum of the applicable rate specified in Subpart D of this part and the rate of $300 per year (reduced by the amount of any income not excluded pursuant to Subpart K of this part) in the case of an eligible individual who has an eligible spouse, if only one of them is in such a hospital, skilled nursing facility, or intermediate care facility throughout such month; and

(iii) At a rate of $600 per year (reduced by the amount of any income not excluded pursuant to Subpart K of this part) in the case of an eligible individual who has an eligible spouse, if both of them are in such a hospital, skilled nursing facility, or intermediate care facility throughout such month.

(b) *Definitions.*—For purposes of this part, the following definitions shall apply:

(1) An "institution" is an establishment which furnishes (in single or multiple facilities) food and shelter to four or more persons unrelated to the proprietor and, in addition, provides some treatment or services which meet some need beyond the basic provision of food and shelter.

(2) A "public institution" is an institution that is the responsibility of a governmental unit, or over which a governmental unit exercises administrative control.

(3) An "inmate of a public institution" is a person who is living in a public institution and receiving treatment and/or services which are appropriate to the person's requirements. A person is not considered an inmate when he is in a public educational or vocational training institution, for purposes of securing education or vocational training.

(4) Being in an institution "throughout a month" means a continuous stay involving 24 hours of every day, in a calendar month. Brief periods of absence while continuing in the status of an inmate of the institution and lasting not more than 14 consecutive days, would not interrupt a continuous stay in the institution.

(5) An institution "receiving payments," with respect to an individual under a State plan approved under title XIX (see paragraph (a)(2) of this section) means that title XIX funds are being provided the hospital, skilled nursing facility, or intermediate care facility (either public, private, or voluntary nonprofit) for reimbursement for the substantial part of the cost of services rendered the individual. For purposes of this section, a "substantial part of the cost" means more than 50 percent of the cost of services provided by the institution to the individual during his stay therein.

(c) *Change of status from "nontitle XIX" to "receiving title XIX" within a month.*—An individual who is otherwise an eligible individual or an eligible spouse, and who enters a facility described in paragraph (a)(2) of this section in a month in which the entire time outside of such facility is spent as an inmate of a public institution, is eligible for the payment in the amount prescribed in paragraph (a)(2) of this section.

SUBPART E—PAYMENT OF BENEFITS, OVERPAYMENTS, AND UNDERPAYMENTS

Sec.

AUTHORITY.—Social Security Amendments of 1972, secs. 1102, 1601, 1602, 1611, 1614, 1631, 1633, 86 Stat. 1465, 1466, 1473, 1475, 1476, 1477, 1478 (42 U.S.C. 1302, 1381, 1381a, 1382, 1382c, 1383, 1383b).

Subpart E—Payment of Benefits

§ 416.501 Payment of benefits: General.

Payment of supplemental security income benefits will be made for the month of application and each subsequent month thereafter in which all requirements for eligibility established pursuant to this part are met. Payment may not be made for months which precede the month in which application is filed. For purposes of this section an application (see Subpart C of this part) is considered to have been filed on the first day of the month in which it is actually filed.

§ 416.502 Manner of payment.

The quarterly payment amount will be paid in equal monthly installments. A separate check will be issued at the beginning of each month and represents payment for that month. Unless otherwise indicated the monthly installment amount for an eligible couple will be divided equally and paid in separate checks to each individual.

§ 416.503 Minimum monthly benefit.

When a supplemental security income benefit is payable and the quarterly amount due is three (3) dollars or less, a minimum monthly payment of one (1) dollar shall be made. Where application is filed in the second or third month of a quarter, the benefit due for the initial quarter being computed on a monthly basis, shall be paid at the minimum payment rate of one (1) dollar per month when the monthly supplemental security income benefit due is one (1) dollar or less.

§ 416.520 Advance payments.

(a) *General.*—An individual initially applying (as defined in paragraph (b)(1) of this section) for supplemental security income benefits may be paid an amount not exceeding the lesser of $100 (or $200 for a couple) or the amount of the first month's benefit (subject to income and other deduction factors described in this part) in advance against future benefits if he is determined to be presumptively eligible (in accordance with paragraph (b)(2) of this section) and is faced with a financial emergency (as defined in paragraph (b)(3) of this section). When an individual and spouse are both requesting advance payments, the amount of such advance to each cannot exceed one-half of the total amount of payment due the couple for the first month.

(b) *Definition of terms*—(1) *Initially applying.*—"Initially applying" means the filing of an application (or other appropriate form) which requires an initial determination of eligibility such as the first application for supplemental security income benefits or an application filed subsequent to a prior denial or termination of a prior period of eligibility for payment. If an individual or spouse or both previously obtained an advance payment in a prior period of eligibility which had terminated, he may again qualify for such advance payment if found to be presumptively eligible and again faced with a financial emergency.

(2) *Presumptively eligible.*—"Presumptively eligible" is the status of an individual or spouse who presents strong evidence of the likelihood of meeting the income and resources tests of eligibility (see Subparts K and L of this part), categorical eligibility (age, disability, or blindness), and technical eligibility (United States residency and citizenship or alien status—see §§ 416.203—416.205).

(3) *Financial emergency.*—"Financial emergency" is the financial status of an individual who has insufficient income or resources to meet an immediate threat to health or safety such as the lack of food, clothing, shelter, or medical care.

(4) *Advance against payments.*—An "advance against payments" is an immediate payment to an individual or spouse who meets the criteria in the preceding subsection of this section. The amount of such payment is deducted from the first month's payment if such individual or spouse is determined to be eligible. (See paragraph (c) of this section if the individual or spouse is determined to be ineligible.)

(c) *Disposition of advance against payments where eligibility is not established.*—If a presumptively eligible individual (or spouse) or couple is determined to be ineligible, an advance against payments based on the existence of a financial emergency constitutes a recoverable overpayment.

[FR Doc.74-4886 Filed 3-1-74;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 26—NUTRITIVE SWEETENERS

Dextrose Monohydrate, Dextrose Anhydrous, Glucose Sirup, Dried Glucose Sirup: Definitions and Standards of Identity; Technical Amendments and Confirmation of Effective Date

In the matter of establishing definitions and standards of identity for the nutritive sweeteners dextrose monohydrate, dextrose anhydrous, glucose sirup and dried glucose sirup:

A notice of proposed rule making was published in the FEDERAL REGISTER of October 5, 1972 (37 FR 21103). The regulations adopting the proposal, with changes, were published in the FEDERAL REGISTER of September 17, 1973 (38 FR 25985), to become effective on a voluntary basis 60 days after publication and to become fully effective after December 31, 1974, unless stayed by objections filed within 30 days. (Corrections in the preamble were published in the FEDERAL REGISTER of October 10, 1973 (38 FR 27929).) No objections to the regulations were filed, but letters were received from a manufacturer of dried corn sirup and from the petitioner of the proposed regulation, the Corn Refiners Association, Inc. (CRA), 1001 Connecticut Ave., NW, Washington, D.C. 20036, requesting that certain changes be made in the regulations and presenting justifications for the changes, as set forth below.

1. One suggested change in the regulations concerned the analytical method for determining reducing sugar content. The method prescribed in §§ 26.1(d)(2) and 26.3(d)(2) of both the proposal and the regulation is section 31.212 in "Official Methods of Analysis of the Association of Official Analytical Chemists" (AOAC), 11th Ed., 1970. The petitioner has now suggested that the referenced method be changed to section 31.212(a) of the AOAC. The CRA has reviewed the methods and notes that AOAC 31.212 provides for two methods described as "31.212(a) Lane-Eynon General Volumetric Method" and "31.212(b) Munson-Walker General Method." It is the opinion of the technical experts of the CRA that only AOAC 31.212(a) should be specified in these regulations. The Commissioner of Food and Drugs concurs in the suggestion made by CRA. In his opinion, the change requested represents a technical rather than a substantive change in the regulations. Elimination of the alternative method should facilitate agreement among different laboratories. Inasmuch as any qualified laboratory can perform either of the analytical methods, the change would not impose a burden on any interested person nor would it have any effect on the identity or quality of the food. The Commissioner also observes that the change would make §§ 26.1(d)(2) and 26.3(d)(2) of the regulations more consistent with the corresponding provisions of the International Standards for the same nutritive sweeteners recommended by the Food and Agriculture Organization/World Health Organization Codex Alimentarius Commission and published in the FEDERAL REGISTER of October 5, 1972 (37 FR 21103). The analytical method specified in those standards is also based on the Lane-Eynon procedure. Accordingly, §§ 26.1(d)(2) and 26.3(d)(2) of the regulations have been changed to read "Reducing sugar content, 31.212(a)."

2. The CRA noted that the definition for glucose sirup, § 26.3(a), in the regulations published in the FEDERAL REGISTER of September 17, 1973 (38 FR 25985), is not identical with the definition as it appeared in the proposed regulations published in the FEDERAL REGISTER of October 5, 1972 (37 FR 21103). The definition as it appeared in the proposal conformed closely to the definition in the previously referenced Codex standards, and the CRA requested that the wording of the proposal be restored so as to maintain the agreement with the International Standards. There were no adverse comments regarding the definition as it appeared in the proposal and it was intended that the same wording be used in the regulations. Accordingly, § 26.3(a) of the regulations has been changed to read "Glucose sirup is the purified, concentrated, aqueous solution of nutritive saccharides obtained from edible starch."

3. The CRA and a manufacturer of dried corn sirup requested the inclusion of additional alternative names for dried glucose sirup. Section 26.4(b) of the regulations provided for the names "dried glucose sirup" and "dried _____ sirup", the blank to be filled in with the name of the starch source. The additional names requested are "glucose sirup solids" and "_____ sirup solids", with the blank to be filled in the same manner. The amendment was requested on the ground that the additional names represent traditionally accepted ways of labeling dried glucose sirup, both for bulk shipments and for consumer products containing dried glucose sirup as an ingredient. The Commissioner concurs in the view expresed by the respondents that the amendment will permit the name of the food to be designated in a manner that is familiar to industry and consumers and established through many years of usage. Accordingly, § 26.4(b) of the regulation has been amended to provide for the alternative names requested.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (secs. 401, 701, 52 Stat. 1046, 1055–1056, as amended by 70 Stat. 919 and 72 Stat. 948; 21 U.S.C. 341, 371) and under authority delegated to the Commissioner (21 CFR 2.120): *It is ordered*, That Part 26 be amended as follows:

1. Section 26.1 is amended by revising paragraph (d)(2) to read as follows:

§ 26.1 **Dextrose monohydrate; identity.**

* * * * *

(d) * * *

(2) Reducing sugar content, 31.212 (a).

* * * * *

2. Section 26.3 is amended by revising paragraphs (a) and (d)(2) to read as follows:

§ 26.3 **Glucose sirup; identity.**

(a) Glucose sirup is the purified, concentrated, aqueous solution of nutritive saccharides obtained from edible starch.

* * * * *

(d) * * *

(2) Reducing sugar content, 31.212(a).

* * * * *

3. Section 26.4 is amended by revising paragraph (b) to read as follows:

§ 26.4 **Dried glucose sirup; identity.**

* * * * *

(b) The name of the food is "dried glucose sirup" or "glucose sirup solids"; provided, that when derived from a specific type of starch, the product may be called "dried _____ sirup" or "_____ sirup solids", the blank to be filled in with the name of the starch; for example, "dried corn sirup", "corn sirup solids", "dried wheat sirup", "wheat sirup solids", "dried tapioca sirup", "tapioca sirup solids". Alternatively, the word "sirup" may be spelled "syrup".

Effective date. Compliance with this order, which shall include any labeling changes required, may begin immediately, and all labeling ordered after March 15, 1974 and all products shipped in interstate commerce after December 31, 1974 shall comply with these regulations.

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

Dated: February 25, 1974.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.74-4910 Filed 3-1-74;8:45 am]

Title 41—Public Contracts and Property Management

CHAPTER 6—DEPARTMENT OF STATE

[Departmental Reg. 108.697]

PART 6–1—GENERAL

PART 6–60—CONTRACT APPEAL REGULATIONS

Miscellaneous Amendments to Procurement Regulations

Parts 6–1 and 6–60 of 41 CFR are amended and revised to make delegations of procurement authority and to issue new contract appeal regulations to conform with new regulations issued by the Armed Services Board of Contract Appeals, the Department of State's authorized representative to hear and determine appeals by contractors.

Inasmuch as these regulations relate to internal delegations of procurement authority and are based on rules previously published, it is impractical and unnecessary to subject them to the notice and public procedure requirements for rulemaking under 5 U.S.C. 553.

1. In Subpart 6–1.4, § 6–1.404–2 is amended by adding paragraph (c) (10) and (11) to read as follows:

§ 6–1.404–2 **Designation.**

* * * * *

(c) * * *

(10) *Office of International Conferences.* The authority to enter into and administer contracts involving funds available from the International Conferences and Contingencies appropriation for the support of international conferences is delegated to the Director and Chief, Administrative Division.

(11) *U.S. Mission to the United Nations.* The authority to enter into and administer contracts involving funds available from the Missions to International Organizations appropriation for USUN is delegated to the Counselor for Administration and the Senior Advisor for Administrative Affairs.

2. In Part 6–60, §§ 6–60.0, 6–60.2, and 6–60.3 are amended to read as follows:

§ 6–60.0 **Scope of part.**

This part relates to disputes arising under Department of State contracts (which shall for the purpose of this part include grants) and to the transfer of certain appellate and review functions of the Department of State to the Armed Services Board of Contract Appeals (referred to in this part as the Board) and the delegation of authority to the Board to hear and decide appeals of contractors from final decisions of contracting officers arising under disputes provisions of contracts awarded by the Department of State.

§ 6–60.2 **Applicability.**

This designation shall apply to appeals, notice of which is received, upon publication in the FEDERAL REGISTER of this revision. Except as otherwise directed by the Board, these rules shall not apply to appeals which have been docketed prior to their effective date.

§ 6–60.3 **Department support.**

The Supply and Transportation Division shall ensure support by officers and employees of the Department of State in processing appeals, and ascertaining information to the extent required for that purpose, before the Board and is hereby authorized to require such officers and employees to cooperate for this purpose.

3. In § 6–60.4, paragraph (a) is revised to read as follows:

§ 6–60.4 **Rules.**

(a) In acting under this designation, the Board will follow the rules in 32 CFR 30.1 (Appendix A) part 2, which are hereby adopted and set forth in paragraph (b) of this section, except as amended. Rule 33 is superseded by the date of effectiveness of this part upon publication. Part 1 of Appendix A, containing the Charter of the Board, is not included in this paragraph. References to military departments and Secretaries thereof are amended to refer to the Department of State and either the Secretary of State or the Assistant Secretary of State for Administration, or their duly authorized representative or Board, as appropriate. Amendments, applicable only to appeals arising from Department of State contracts, concerning other provisions of the Rules are identified by the caption (STATE).

* * * * *

4. Under § 6–60.4(b), Preface to Rules of the Armed Services Board of Contract Appeals, paragraph I is amended, and paragraphs 3 and 4 under I(b) are revised to read as follows:

PREFACE TO RULES OF THE ARMED SERVICES BOARD OF CONTRACT APPEALS

I. SUMMARY OF PERTINENT CHARTER PROVISIONS

The Armed Services Board of Contract Appeals is the authorized representative of the Secretary of State and the Assistant Secretary of State for Administration, in hearing, considering, and determining as fully and finally as might either official:

* * * * *

(a) * * *

(b) * * *

There are a number of divisions of the Armed Services Board of Contract Appeals, established by the Chairman of the Board in such manner as to provide for the most effective and expeditions handling of appeals. The Chairman and a Vice Chairman of the Board act as members of each division. Appeals are assigned to the divisions for decision without regard to the military department or other procuring agency which entered into the contract involved. Hearing may be held by a designated member (administrative judge), or by a duly authorized examiner. The decision of a majority of a division constitutes the decision of the Board, unless the Chairman refers the appeal to the Board's Senior Deciding Group (consisting of the Chairman, Vice Chairman and all division heads), in which event a decision of a majority of that group constitutes the decision of the Board. Appeals referred to the Senior Deciding Group are those of unusual difficulty, significant precedential importance, or serious dispute within the normal division decision process.

On request of the parties, an appeal involving $25,000 or less may be decided by a single member and a Vice Chairman or the Chairman under a simplified, accelerated procedure, in accordance with Rule 12. This procedure contemplates a short decision made in not over 30 days from the time the appeal is ready for decision. Further, in appeals involving $5,000 or less, a single member may decide the appeal orally from the bench at the conclusion of a hearing.

5. Under Preliminary Procedures in § 6–60.4(b), paragraphs 3, 4, 6(b), 8, 11, 12, 13, and 14 are amended as follows:

PRELIMINARY PROCEDURES

* * * * *

3. *Forwarding of appeals (STATE).* When a notice of appeal in any form has been received by the contracting officer, he shall

endorse thereon the date of mailing (or date of receipt, if otherwise conveyed) and within 10 days shall forward said notice of appeal to the Board, with copies to the Supply and Transportation Division and the Legal Adviser of the Department of State. Following receipt by the Board of the original notice of an appeal (whether through the contracting officer or otherwise), the contractor, the contracting officer, the Supply and Transportation Division and the Legal Adviser of the Department of State will promptly be advised of its receipt, and the contractor will be furnished a copy of these rules.

4. *Preparation, Contents, Organization, Forwarding, and Status of Appeal File (STATE).*—(a) *Duties of contracting officer.* Following receipt of a notice of appeal, or advice that an appeal has been filed, the contracting officer shall promptly, and in any event within 30 days, compile and transmit to the Supply and Transportation Division copies of all documents pertinent to the appeal, including:

(1) The decision and findings of fact from which appeal is taken;

(2) The contract, including specifications and pertinent amendments, plans and drawings;

(3) All correspondence between the parties pertinent to the appeal, including the letter or letters of claim in response to which decision was issued;

(4) Transcripts of any testimony taken during the course of proceedings, and affidavits or statements of any witnesses on the matter in dispute made prior to the filing of the notice of appeal with the Board;

(5) Any additional information considered pertinent.

The Supply and Transportation Division shall compile an appeal file from such documents, which file must contain the items enumerated in paragraphs (a)(1) to (a)(5) above, and shall promptly, and in any event within 65 days after the appeal is docketed by the Board (except that this period shall not exceed 40 days if the contracting officer is located, and necessary documentation is substantially available, within the United States) transmit the appeal file to the Board. The Supply and Transportation Division shall notify the appellant when it has transmitted the appeal file to the Board, and shall furnish the appellant a copy of each document transmitted to the Board, except those stated in subparagraph (a)(2) above, as to which a list furnished appellant indicating specific contractual documents transmitted will suffice, and those stated in subparagraph (d) below.

(b) *Duties of the appellant.* Within 30 days after receipt of a copy of the appeal file assembled by the contracting officer, the appellant shall supplement the same by transmitting to the Board any documents not contained therein which he considers pertinent to the appeal, and furnishing two copies of such documents to the Legal Adviser's office.

(c) *Organization of appeal file.* Documents in the appeal file may be original or legible facsimile or authenticated copies thereof, and shall be arranged in chronological order where practicable, numbered sequentially tabbed, and indexed to identify the contents of the file.

(d) *Lengthy documents.* The Board may waive the requirement of furnishing to the other party copies of bulky, lengthy, or out-of-size documents in the appeal file when a party has shown that doing so would impose an undue burden. At the time a party files with the Board a document as to which such a waiver has been granted, he shall notify the other party that the same or a copy is available for inspection at the offices of the Board or of the party filing same.

(e) *Status of documents in appeal file.* Documents contained in the appeal file are considered, without further action by the parties, as part of the record upon which the Board will render its decision, unless a party objects to the consideration of a particular document in advance of hearing or of settling the record in the event there is no hearing on the appeal. If objection to a document is made, the Board will rule upon its admissibility into the record and/or the weight to be attached to it as evidence in accordance with Rules 13 and 20, hereof.

6. *Pleadings.*

(a) * * *

(b) Within 30 days from receipt of said complaint, or the aforesaid notice from the Recorder of the Board, respondent shall prepare and file with the Board an original and two copies of an answer thereto, setting forth simple, concise, and direct statements of respondent's defenses to each claim asserted by appellant. This pleading shall fulfill the generally recognized requirements of an answer, and shall set forth any affirmative defense or counterclaims, as appropriate. Upon receipt thereof, the Recorder shall serve a copy upon the appellant. Should the answer not be received within 30 days, the Board may, in its discretion, enter a general denial on behalf of the Government, and the appellant shall be so notified.

* * * * *

8. Upon receipt of respondent's answer or the notice referred to in the last sentence of Rule 6(b), above, appellant shall advise whether he desires a hearing, as prescribed in Rules 17 through 25, or whether in the alternative he elects to submit his case on the record without a hearing, as prescribed in Rule 11. In appropriate cases, the appellant shall also elect whether he desires the optional accelerated procedure prescribed in Rule 12.

* * * * *

11. *Submission without a hearing.* Either party may elect to waive a hearing and to submit his case upon the record before the Board, as settled pursuant to Rule 13. Submission of a case without hearing does not relieve the parties from the necessity of proving the facts supporting their allegations or defenses. Affidavits, depositions, admissions, answers to interrogatories, and stipulations may be employed to supplement other documentary evidence in the Board record. The Board may permit such submission to be supplemented by oral argument (transcribed if requested), and/or by briefs, arranged in accordance with Rule 23.

12. *Optional accelerated procedure.* In appeals involving $25,000 or less, either party may elect, in his notice of appeal, complaint, answer or by separate correspondence or statement prior to commencement of hearing or settlement of the record, to have the appeal processed under a shortened and accelerated procedure. For application of this rule the amount in controversy will be determined by the sum of the amounts claimed by either party against the other in the appeal proceeding. If no specific amount of claim is stated, a case will be considered to fall within this rule if the sum of the amounts which each party represents in writing that it could recover as a result of a Board decision favorable to it does not exceed $25,000. Upon such election, a case shall then be processed under this rule unless the other party objects and shows good cause why the substantive nature of the dispute requires processing under the Board's regular procedures and the Board, acting through a Vice Chairman or the Chairman, sustains such objection. In cases proceeding under this rule, parties are encouraged, to the extent possible consistent with adequate presentation of their factual and legal positions, to waive pleadings, discovery, and briefs.

Written decision by the Board in cases proceeding under this rule normally will be short and contain summary findings of fact and conclusions only. The Board will endeavor to render such decisions within 30 days after the appeal is ready for decision. Such decisions will be rendered for the Board by a single Board member with the concurrence of a Vice Chairman or the Chairman; except that in cases involving $5,000 or less where there has been a hearing, the single Board member presiding at the hearing may, in his discretion, at the conclusion of the hearing and after entertaining such oral arguments as he deems appropriate, render on the record oral summary findings of fact, conclusions and decision of the appeal. In the latter instance, the Board will subsequently furnish the parties a typed copy of such oral decision for record and payment purposes and to establish the date from which the period for filing a motion for reconsideration under Rule 29 commences.

Except as herein modified, these rules otherwise apply to all respects.

13. *Settling the record.* (a) The record upon which the Board's decision will be rendered consists of the appeal file described in Rule 4, and, to the extent the following items have been filed, pleadings, pre-hearing conference memoranda or orders, pre-hearing briefs, depositions or interrogatories received in evidence, admissions, stipulations, transcripts of conferences and hearings, hearing exhibits, post-hearing briefs, and documents which the Board has specifically designated to be made a part of the record. The record will at all reasonable times be available for inspection by the parties at the office of the Board.

(b) Except as the Board may otherwise order in its discretion, no proof shall be received in evidence after completion of an oral hearing or, in cases submitted on the record, after notification by the Board that the case is ready for decision.

(c) The weight to be attached to any evidence of record will rest within the sound discretion of the Board. The Board may in any case require either party, with appropriate notice to the other party, to submit additional evidence on any matter relevant to the appeal.

14. *Discovery—Depositions.*—(a) *General policy and protective orders.* The parties are encouraged to engage in voluntary discovery procedures. In connection with any deposition or other discovery procedure, the Board may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, and those orders may include limitations on the scope, method, time and place for discovery, and provisions for protecting the secrecy of confidential information or documents.

(b) *When depositions permitted.* After an appeal has been docketed and complaint filed, the parties may mutually agree to, or the Board may, upon application of either party and for good cause shown, order the taking of testimony of any person by deposition upon oral examination or written interrogatories before any officer authorized to administer oaths at the place of examination, for use as evidence or for purpose of discovery. The application for order shall specify whether the purpose of the deposition is discovery or for use as evidence.

(c) *Orders on depositions.* The time, place, and manner of taking depositions shall be as mutually agreed by the parties, or, failing

such agreement, governed by order of the Board.

(d) *Use as evidence.* No testimony taken by deposition shall be considered as part of the evidence in the hearing of an appeal unless and until such testimony is offered and received in evidence at such hearing. It will not ordinarily be received in evidence if the deponent is present and can testify personally at the hearing. In such instances, however, the deposition may be used to contradict or impeach the testimony of the witness given at the hearing. In cases submitted on the record, the Board may in its discretion receive depositions as evidence in supplementation of that record.

(e) *Expenses.* Each party shall bear its own expenses associated with the taking of any deposition.

6. Under Hearings in section 6–60.4(b), paragraph 17 is revised to read as follows:

HEARINGS

17. *Where and when held.* Hearings will ordinarily be held in Washington, D.C., except that upon request seasonably made and upon good cause shown, the Board may in its discretion set the hearing at another location. Hearings will be scheduled at the discretion of the Board with due consideration to the regular order of appeals and other pertinent factors. On request or motion by either party and upon good cause shown, the Board may in its discretion advance a hearing.

* * * * *

7. In § 6–60.4(b) a center heading, Dismissals, is added, paragraph 30 is revised, and paragraphs 31 and 32 are added to read as follows:

DISMISSALS

30. *Dismissal without prejudice.* In certain cases, appeals docketed before the Board are required to be placed in a suspense status and the Board is unable to proceed with disposition thereof for reasons not within the control of the Board. In any such case where the suspension has continued, or it appears that it will continue, for an inordinate length of time, the Board may in its discretion dismiss such appeals from its docket without prejudice to their restoration when the cause of suspension has been removed. Unless either party or the Board acts within three years to reinstate any appeal dismissed without prejudice, the dismissal shall be deemed with prejudice.

31. *Dismissal for failure to prosecute.* Whenever a record discloses the failure of the appellant to file documents required by these rules, respond to notices or correspondence from the Board, comply with orders of the Board, or otherwise to indicate an intention to continue the prosecution of an appeal filed, the Board may issue an order requiring appellant to show cause within thirty days why the appeal should not be dismissed for lack of prosecution. If the appellant shall fail to show such cause, the appeal may be dismissed with prejudice.

EX PARTE COMMUNICATIONS

32. No member of the Board or of the Board's staff shall entertain, nor shall any person directly or indirectly involved in an appeal submit to the Board or the Board's staff, off the record any evidence, explanation, analysis, or advice, whether written or oral, regarding any matter at issue in an appeal. This provision does not apply to consultation among Board members nor to ex parte communications concerning the Board's administrative functions or procedures.

AUTHORITY: Sec. 205(c), 63 Stat. 390, as amended, (40 U.S.C. 486(c)); sec. 4, 63 Stat. 111, (22 U.S.C. 2658).

Effective date: These amendments are effective March 4, 1974.

Dated: February 20, 1974.

[SEAL] JOHN M. THOMAS,
Assistant Secretary for Administration.

[FR Doc.74–4898 Filed 3–1–74;8:45 am]

CHAPTER 7—AGENCY FOR INTERNATIONAL DEVELOPMENT, DEPARTMENT OF STATE

[AIDPR Notice 74–1]

PART 7–1—GENERAL

PART 7–4—SPECIAL TYPES AND METHODS OF PROCUREMENT

Architect-Engineer Services

This notice supplements and implements Amendment 122, dated November 29, 1973, to the Federal Procurement Regulations (FPR) (38 FR 33594 et seq.), which provides coverage of architect-engineer services.

1. New § 7–1.1003–3, *Special areas of negotiation,* is added to the table of contents of Part 7–1.

Subpart 7–1.10—Publicizing Procurement Actions

2. Add new § 7–1.1003–3 as follows:

§ 7–1.1003–3 Special areas of negotiation.

A.I.D. utilizes A.I.D. Form 1420–5, "Exception to Standard Form 251, Architect-Engineer Questionnaire", in place of the Standard Form 251, "U.S. Government Architect-Engineer Questionnaire" cited in FPR 1–1.1003–3(b).

§ 7–1.1003–7 [Amended]

3. Amend § 7–1.1003–7 to add new paragraph (c) as follows:

(c) A.I.D. utilizes A.I.D. Form 1420–5, "Exception to Standard Form 251, Architect-Engineer Questionnaire", in place of the Standard Form 251, "U.S. Government Architect-Engineer Questionnaire" cited in FPR 1–1.1003–7(b)(9).

4. The table of contents of Part 7–4 is revised to delete Subpart 7–4.2 in its entirety and to add new Subpart 7–4.10 as follows:

Subpart 7–4.10—Architect-Engineer Services

AUTHORITY: Sec. 621, 72 Stat. 445, as amended; 22 U.S.C. 2381. E.O. 10973, November 3, 1961, 26 FR 10469; 3 CFR 1959–63 Comp.

Subpart 7–4.2—Architect-Engineer Services

5. Subpart 7–4.2 is deleted in its entirety.

6. Add the following new subpart 7–4.10.

Subpart 7–4.10—Architect-Engineer Services

§ 7–4.1003 Public announcements.

(a) To ensure the broadest publicity concerning the Government's interest in obtaining architect-engineer services, the contracting officer shall develop notices in accordance with FPR 1–1.1003 with respect to individual projects.

(b) A Contractors' Index is maintained in Washington by the A.I.D. Small Business Office. Architect-engineers wishing to perform contracts for A.I.D. should file the appropriate form with that office, as provided in AIDPR 7–1.1001(b). Procurements are publicized in the "Department of Commerce Synopsis", as provided in FPR 1–1.10 and AIDPR 7–1.10.

§ 7–4.1004–1 Establishment of architect-engineer evaluation boards.

(a) The Director, Office of Engineering, or the chief engineer at an A.I.D. mission is the designated representative of the agency head for the establishment of architect-engineer evaluation boards.

(b) No firm or organization shall be eligible for consideration for a contract where its principals or associates participated as a member of the evaluation board in the selection process for that project.

(c) Each evaluation board will include a representative of the contracting officer and, as appropriate, the cognizant bureau.

§ 7–4.1004–2 Functions of the evaluation boards.

Agency architect-engineer evaluation boards shall perform the following functions:

(a) Utilize current data files on architect-engineer firms as collected by the A.I.D. Small Business Office, including information on the qualifications of their members and key employees and past experience on various types of engineering and construction projects. The A.I.D. Form 1420–5, supported by required photographs and any supplemental data requested in the notice required by FPR 1–1.1003–3 shall be used for this purpose. Information from other sources (such as other clients, other members of the profession, managers or occupants of facilities previously designed, assessments by the procuring agency itself on prior projects awarded to a firm) may also be included in the files;

(b) When procurement of architect-engineer services is proposed and following publication of a notice as required by FPR 1–1.1003–3, the board shall review the data files on eligible firms including files established on receipt of an A.I.D. Form 1420–5 and any supplemental data required in response to the public notice of a particular contract, and shall evaluate the firms in accordance with AIDPR 7–4.1004–3. After making this review and technical evaluation, the board shall hold discussions with not less than three of the firms deemed most highly

qualified regarding anticipated concepts and relative utility of alternative methods of approach for furnishing the required services. Oral discussions are preferred, but, if deemed appropriate, a written questionnaire may be used. Overseas missions are encouraged to use AID/W engineering staff to conduct oral discussions in the U.S. when face-to-face discussions at the mission become prohibitively expensive. In so doing, architect-engineer fees will not be a consideration and will not be discussed; and

(c) Prepare a selection memorandum recommending no less than three firms which are considered most highly qualified to perform the required services for submission to the head of the procuring activity for his approval. This selection memorandum shall include the information specified in AIDPR 7-4.1004-3(b).

§ 7-4.1004-3 Evaluation criteria and selection memorandum.

(a) In evaluating architect-engineer firms, the architect-engineer evaluation board shall apply the following criteria, other criteria established by Agency regulations, and any criteria set forth in the public notice on a particular contract:

(1) Specialized experience of the firm (including each member of joint venture or association) with the type of service required;

(2) Capacity of the firm to perform the work (including any specialized services) within the time limitations;

(3) Past record of performance on contracts with A.I.D. or other Government agencies and private industry with respect to such factors as control of costs, quality of work, and ability to meet schedules, to the extent such information is available;

(4) Ability to assign an adequate number of qualified key personnel from the organization, including a competent supervising representative having considerable experience in responsible positions on work of a similar nature;

(5) The portions of the work the architect-engineer is able to perform with its own forces when required;

(6) Ability of the architect-engineer to furnish or to obtain required materials and equipment;

(7) If the geographical or topographical aspects of the project are deemed vital, familiarity with the locality where the project is situated;

(8) Financial capacity;

(9) Responsibility of the architect-engineer under standards provided in FPR 1-1.1203-1 and 1-1.1203-2. No contract may be awarded to a contractor that does not meet these standards;

(10) Volume of work previously awarded to the firm by the Agency, with the object of effecting an equitable distribution of architect-engineer contracts among qualified firms. Each architect-engineer evaluation board shall give favorable consideration, to the fullest extent practicable, to the most highly qualified firms that have not had prior experience on Government projects (including small business firms and firms owned by the socially and/or economically deprived).

(b) The evaluation board shall prepare a selection memorandum for the approval of the head of the procuring activity. The selection memorandum will be signed by the board chairman and cleared by each board member. The selection memorandum shall include the following information:

(1) A listing by name of all the firms reviewed by the board;

(2) A listing of the evaluation criteria applied;

(3) An analysis of the selection showing the rationale for the board's recommendation;

(4) The board's recommendation of the three most highly qualified firms, in order of preference;

(5) An independent Government cost estimate. The evaluation board shall require the project engineer to develop an independent Government estimate of the cost of the required architect-engineer services. Consideration shall be given to the estimated value of the services to be rendered, the scope, complexity, and the nature of the project and the estimated costs expected to be generated by the work. The independent Government estimate shall be revised as required during negotiations to correct noted deficiencies and reflect changes in, or clarification of, the scope of the work to be performed by the architect-engineer. A cost estimate based on the application of percentage factors to cost estimates of the various segments of the work involved, e.g. construction project, may be developed for comparison purposes, but such a cost estimate shall not be used as a substitute for the independent Government estimate.

§ 7-4.1004-4 Action by Agency head or his authorized representative.

(a) The head of the procuring activity or his authorized designee shall review the selection memorandum and shall either approve it or return it to the board for reconsideration for specified reasons.

(b) Approval of the selection memorandum by the head of the procuring activity or his authorized designee shall serve as authorization for contracting officer to commence negotiation.

§ 7-4.1004-5 Procedure for procurements estimated not to exceed $10,000.

References to FPR 1-4.1004-2 (b) and (c) in FPR 1-4.1004-5 shall be construed as references to AIDPR 7-4.1004-2 (b) and (c).

§ 7-4.1005-3 Independent Government cost estimate.

See AIDPR 7-4.1004-3(b)(5).

Filing. This notice should be filed in front of the main text of the Agency for International Development Procurement Regulations.

Authority. This AIDPR Notice No. 74-1 is an interim procurement instruction and is issued pursuant to AIDPR 7-1.104-4.

Effective date. This notice is effective immediately.

Dated: February 15, 1974.

WILLARD H. MEINECKE,
Deputy Assistant Administrator for Program and Management Services.

[FR Doc.74-4891 Filed 3-1-74;8:45 am]

Title 49—Transportation

CHAPTER X—INTERSTATE COMMERCE COMMISSION

SUBCHAPTER A—GENERAL RULES AND REGULATIONS

[S.O. No. 1129; Amdt. 4]

PART 1033—CAR SERVICE

Chicago, Rock Island and Pacific Railroad Co.

At a Session of the Interstate Commerce Commission, Railroad Service Board, held in Washington, D.C., on the 25th day of February, 1974.

Upon further consideration of Service Order No. 1129 (38 FR 8062, 9668, 18026 and 33399), and good cause appearing therefor:

It is ordered, That:

Section 1033.1129 *Service Order No. 1129* (Chicago, Rock Island and Pacific Railroad Company authorized to operate over tracks of Burlington Northern Inc.) be, and it is hereby, amended by substituting the following paragraph (e) for paragraph (e) thereof:

(e) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., May 31, 1974, unless otherwise modified, changed, or suspended by order of this Commission.

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

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

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

By the Commission, Railroad Service Board.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.74-4917 Filed 3-1-74;8:45 am]

Title 10—Energy

CHAPTER I—ATOMIC ENERGY COMMISSION

PART 9—PUBLIC RECORDS

Charges for Provision of Records

On September 28, 1973, the Atomic Energy Commission published in the FEDERAL REGISTER (38 FR 27096) proposed amendments to its regulations in 10 CFR Part 9, Public Records. The proposed amendments would modify the schedule of charges for producing records requested by the public. The charges are designed to recover the Government's cost in providing these records. Under the proposed amendment, the charge for processing requests, which require search by clerical personnel, would be increased from $5.00 to $6.00 per hour in keeping with current cost experience. Also, an actual hourly rate per person would be established prior to processing requests requiring screening by professional personnel. Screening will be necessary only when the requested records contain information that is exempt under the Freedom of Information Act (5 U.S.C. 552).

Interested persons were invited to submit written comments and suggestions for consideration in connection with the proposed amendments by November 12, 1973. No comments having been received, the Commission hereby amends § 9.9, as set forth below, effective on March 4, 1974.

§ 9.9 Charges for provision of records.

(a) A self-service, coin-operated office copying machine, located in the Reading Room adjacent to the Public Document Room, is available for the reproduction of records up to 8½ x 14 inches in size at a charge of $0.05 per page copy. In addition, there is available at the Public Document Room, for a charge of $0.50 per hour of use or any fraction thereof, a self-service copying machine for the use of those persons who choose to provide their own paper for the reproduction of records. Where such copying machines are available for public use in major AEC field offices, similar arrangements will be made.

(b) For copies of records to be reproduced and furnished by the AEC, the following reproduction charges will be made:

(1) Sizes up to 8½ x 14 inches made on office copying machines—$0.10 per page copy. Larger sizes—$0.10 for each 8½ x 14 inch unit or fraction thereof per page copy.

(2) Photostat copies—$0.40 each up to 9 x 12 inches. Copies larger than 9 x 12 inches, $0.40 for each 9 x 12 inch unit or fraction thereof.

(3) The charge for reproducing other records will be computed on the AEC full-cost recovery basis.

(4) Material which has been copyrighted will not be reproduced in violation of the copyright laws.

(c) If a request is for records not located in the Public Document Room, a search charge of $6.00 per hour will be made. As necessary, a charge based on the actual hourly rates of the professional employee involved will be made for the screening of records to exclude information that is exempt under the Freedom of Information Act (5 U.S.C. 552). Fractional parts of an hour will be charged on a pro rata basis for the search and screening functions. No charge will be made for these functions if one hour or less is required to fulfill a request.

(d) A deposit or surety bond equal to the estimated cost of searching, screening, and reproducing the number of requested copies will be required in advance from any person requesting copies of records from the AEC. Refunds of unused deposits or additional billings will be made to adjust the charge to the actual cost.

(e) In compliance with the Federal Advisory Committee Act transcripts of testimony in AEC proceedings, which are transcribed by a reporting firm under contract with the AEC, shall be purchased directly from the reporting firm or AEC at the cost of reproduction as provided for in the AEC contract with the reporting firm.

(f) No charge will be made for locating records which are on file in the AEC Public Document Room.

(g) The General Manager or the Director of Regulation, or either's designee, may waive all or port of the fee for searching, screening or reproducing if he determines such action to be in the public interest.

(Sec. 161, Pub. Law 83-703, 68 Stat. 948 (42 U.S.C. 2201); sec. 501, Pub. Law 82-137, 65 Stat. 290 (31 U.S.C. 483a); sec. 11, Pub. Law 92-463, 86 Stat. 775 (5 U.S.C. 552))

Dated at Washington, D.C., this 27th day of Feb. 1974.

For the Atomic Energy Commission.

GORDON M. GRANT,
Acting Secretary of the Commission.

[FR Doc.74-4906 Filed 3-1-74;8:45 am]

Title 6—Economic Stabilization

CHAPTER I—COST OF LIVING COUNCIL

PART 150—PHASE IV PRICE REGULATIONS

Cathode Ray Picture Tubes—Productivity Gains

The purpose of these amendments is to revise downward the average annual rate of productivity gain applicable to cathode ray picture tubes (SIC No. 3672) under the Phase IV price regulations.

Cost increases used to justify price increases must be reduced to reflect the average rate of productivity gain in the industry as specified in the Cost of Living Council's price regulations. This adjustment is required because improvements in productivity result in a decrease in the cost of each unit produced.

The Phase IV price control regulations therefore require that increases in costs be reduced to take productivity gains into account in justifying price increases. The "productivity offset" must be based on the average annual rate in the industry concerned as provided in the table appended to Subpart E of the price regulations. The requirement to use the industry average is intended to help curb inflation by encouraging firms with less-than-average productivity gains to increase their productivity.

The table in the Appendix to Subpart E of the Phase IV price regulations contains average rates of productivity gain for over 400 industrial categories, classified according to the 4-digit Standard Industrial Classification Code (SIC) system. The productivity rates represent a log-linear trend calculation of annual rates of productivity changes over the 12-year period 1958–1969. A yearly index of output per man-hour (e.g., 117.8 units/man-hour) in the industry concerned is developed by dividing an output index by an index of the number of man-hours needed to produce that output. The annual growth rate of productivity is then calculated from the output per man-hour index over the years 1958 to 1969.

The Council's productivity-rate table is based on output and man-hour data from the Bureau of the Census and the Bureau of Labor Statistics (BLS). In the case of the industry producing cathode ray tubes (TV picture tubes, both black/white and color) a productivity series based on physical output was not available. BLS therefore derived an output index by dividing total dollar sales, adjusted for inventory change, for each year concerned by the average price of picture tubes. The average annual rate of productivity gain determined by this method for the cathode ray picture tube industry over the 1958–69 period was put at 11.7 percent—the highest rate found in the Council's productivity table.

In response to a request from the Electronics Industries Association for a revision of this high figure, the Council agreed to re-examine the basis upon which the 11.7 percent rate was derived. Investigation revealed that color tubes were priced during only a portion of the period in which they were produced during the years 1958–69. Since price movements on color tubes were significantly different from price movements on black/white tubes, the "output index" calculated by this method appeared distorted. The rate of productivity gain was, as a result, correspondingly distorted.

The Council examined an extensive industry survey based on company data which has now been collected (supplied, in part, by the EIA) showing actual output of tubes per year over the period 1958–69 and the actual man-hours of direct and indirect labor involved in this production. The data included production figures of four of the six firms currently producing cathode ray tubes, representing more than ¾ of total sales in 1969. The other two firms were unable to retrieve the necessary data in time for the present review of the productivity rate for this industry. Based on these considerations and its own examination of the data supplied, the Council has determinated that the 11.7 percent rate should be reduced to 5.9 percent. The

Council believes that the revised figure more accurately represents the actual experience of the industry and is preferable for Phase IV purposes. A more extensive long-term analysis of productivity in this industry is being considered by the Bureau of Labor Statistics, with the cooperation of the industry, but results will not be available for some time.

The Council has, accordingly, amended the appendix to Subpart E of the Phase IV price regulations to replace the 11.7 percent rate for cathode ray picture tubes with the new 5.9 percent rate, effective January 1, 1974.

The Council wishes to point out that the circumstances in this case were exceptional and that substantial time is required to process requests for re-evaluation of productivity rates.

Because the purpose of this amendment is to provide immediate guidance and information with respect to decisions of the Council, the Council finds that publication in accordance with normal rulemaking procedure is impracticable and that good cause exists for making this amendment effective in less than 30 days.

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

In consideration of the foregoing, Part 150 of Title 6 of the Code of Federal Regulations is amended as set forth below, effective January 1, 1974.

Issued in Washington, D.C., on February 28, 1974.

JAMES W. MCLANE,
Deputy Director.

1. The table in the Appendix to Subpart E is amended by deleting the number "11.7" opposite the Standard Industrial Code No. 3672 and substituting therefor the number "5.9".

2. The table in the Appendix to Subpart E is further amended by placing a dagger (the printing reference mark) immediately to the right of the number "5.9" where it appears opposite the Standard Industrial Code No. 3672.

3. The table in the Appendix to Subpart E is further amended by adding at the end of the footnotes to that table a dagger (the printing reference mark) and the following footnote:

† Revised effective January 1, 1974. See preamble to regulation amendment, 39 FR 8162.

[FR Doc.74-5066 Filed 3-1-74;9:52 am]

PART 150—PHASE IV PRICE REGULATIONS

Steel Price Decisions

The purpose of this amendment is to add Special Rule Number 6 to the Appendix to Subpart J. The new special rule will permit price increases for steel items by Price Category I firms.

Three prior special rules have been issued by the Council affecting steel price increases. Special Rule 1, published September 13, 1973, deferred prenotified price increases for flat rolled items in Group 331 and allowed implementation of those increases in two steps. The first of those increases occurred in October 1, 1973; the second on January 1, 1974. The rule prohibited price increases for other items in the Group. As a part of Special Rule 1, the Council permitted firms to submit prenotification forms for other steel products prior to December 1, 1973 with an effective filing date of December 1, 1973.

In December, 1973, the Council held hearings on the steel industry, and following those hearings, issued Special Rules 4 and 5.

Special Rule 4 affected items in Group No. 331 and it permitted an adjustment in the adjusted freeze prices of steel items whose prices had not theretofore been increased in Phase IV, to reflect increases in the cost of purchased ferrous scrap incurred between June 1 and December 31, 1973.

Special Rule No. 5 was issued on January 25, 1974 affecting all steel items in Group No. 331. Under Special Rule 5, firms could increase the price for steel items to reflect the net increases in allowable costs prenotified prior to January 1, 1974. The rule deferred action on prenotifications submitted on or after that date.

Special Rule No. 6 is related to all of these actions as it affects price increases deferred by Special Rule No. 5 and later price increases justified by higher purchased ferrous scrap and other costs. Special Rule 6 includes a one-time waiver of the prenotification regulations for allowable costs through January 31, 1974. It also includes provisions granting firms a form of volatile pricing authority for purchased ferrous scrap costs. Under the new special rule, firms increasing the price of steel items to reflect purchased ferrous scrap costs are also required to reduce the price in response to a decline in purchased ferrous scrap costs.

Under section 2 of the new special rule, a firm may increase the price for steel items (those items listed in Group No. 331 of the SIC Manual, 1972 edition) to reflect all allowable costs incurred through January 31, 1974. The price increases may be put into effect without prenotification. A firm increasing the price of a steel item pursuant to this rule must submit a special report to the Council containing information on the price increase within 15 days of the increase. The special report will include all information required for prenotificaiton along with a separate statement of the portion of the price increase attributable to increased purchased ferrous scrap costs and certain other supporting schedules.

Firms submitting prenotifications after January 1, 1974, of price increases for steel items have had those increases deferred by operation of Special Rule No. 5. The price increase authorization of Special Rule No. 6 supersedes the deferral provision (section 3) of Special Rule No. 5.

The price increase authorization of section 2 of the new special rule is a one-time waiver of the prenotification requirements and does not affect price increases which may be justified by costs incurred after January 31, 1974. Those later price increases must be implemented according to the prenotification provisions except to the extent the costs are purchased ferrous scrap costs subject to section 3 of Special Rule No. 6.

This price increase authorization is based on a determination that, in the interest of longer run price stability and increased capacity investment, steel firms must be allowed to increase prices now to reflect incurred cost increases.

Section 3 of the new special rule provides a modified form of volatile pricing authority for firms manufacturing steel items using purchased ferrous scrap. Under this section of the new special rule a firm may adjust the price of any steel item at the close of each accounting month to reflect changes in the price of purchased ferrous scrap. A firm may increase the price of an item to reflect higher purchased ferrous scrap costs and must decrease the price of an item to reflect lower purchased ferrous scrap costs.

Special reports are also required of firms using the price increase authority of section 3 of Special Rule No. 6. A firm adjusting prices according to section 3 must submit a report to the Council providing information on purchased ferrous scrap costs and price levels for steel items as of February 28, 1974. The report must be filed by March 15, 1974. Subsequent reports are required to be filed not later than fifteen days after the close of each accounting month to provide information on price adjustments and changes in purchased ferrous scrap costs during the prior month.

The modified volatile pricing authority is necessary to allow firms to react to changes in purchased ferrous scrap costs. The price of this commodity has increased sharply since the beginning of the year. Ferrous scrap accounts for a significant portion of the raw material for some items and the delays of prenotification would force firms to absorb these increased costs for 30 days or more. The exemption of ferrous scrap is expected to provide an increased supply and a more stable price in the future. The price increase authority for purchased ferrous scrap costs is necessary to provide relief from current cost pressures.

Also included in this special rule is a requirement for firms subject to the rule to provide the Council by March 15, 1974 with reports on estimated cost levels through July 31, 1974. These reports should include information on expected costs using July 1–July 31, 1974 as the current cost period. A separate statement of expected cost levels attributable to purchased ferrous scrap and energy and energy related costs is also required.

These reports will assist the Council in making future decisions affecting the steel industry.

Because the purpose of this amendment is to provide immediate guidance and information with respect to the decisions of the Council, the Council finds that publication in acocrdance with normal rule making procedure is impracticable and that good cause exists for making this amendment effective in less than 30 days. Interested persons may submit written comments regarding this regulation. Communications should be addressed to the Office of the General Counsel, Cost of Living Council, 2000 M Street, NW., Washington, D.C. 20508.

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

In consideration of the foregoing, Part 150 of Title 6 of the Code of Federal Regulations is amended as follows effective 11:59 p.m., e.s.t., February 28, 1974.

Issued in Washington, D.C. on February 28, 1974.

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

In 6 CFR Part 150, Subpart J is amended by adding a new Special Rule to the appendix to read as follows:

APPENDIX

SPECIAL RULE NUMBER 6

1. *Applicability.* This special rule applies to all Price Category I firms which manufacture steel items listed in the SIC Manual, 1972 Edition, under Group No. 331 (hereinafter referred to as steel items).

2. *Waiver of prenotification for costs incurred through January 31, 1974.* A firm subject to this special rule may increase the price for any steel item without regard to the prenotification provisions of Subpart H of this part to reflect net increases in allowable costs incurred through January 31, 1974.

3. *Waiver of prenotification for purchased scrap costs.* (a) *Rule.* A firm subject to this special rule using purchased scrap to produce a steel item may adjust the price of that steel item without regard to the prenotification provisions of Subpart H to reflect increased purchased scrap costs. A firm shall calculate the price increase authorized by this section in the manner required by Schedule C of form CLC-22. In calculating purchased scrap costs, a firm shall use the output method.

(b) *Definition.* For purposes of this special rule the term "purchased scrap" means purchased ferrous scrap and purchased ferrous alloy scrap.

(c) *Calculation of price adjustments.* A firm may adjust prices pursuant to the rule of this section after the conclusion of an accounting month to reflect the increase in purchased scrap costs during that accounting month. A firm which increases a price pursuant to the authorization of this section shall reduce that price to the extent of any later decrease in purchased scrap costs.

4. *Reports.* (a) Any firm increasing a price for any steel item pursuant to section 2 of this special rule shall submit a report to that Council of that price increase. This report shall be submitted within 15 days of the price increase and shall be on the forms prescribed for prenotification. The report shall include all information which would have been required for prenotification of that price and shall be sufficient to justify the price increase. The report shall note separately the portion of the price increase for any item which is attributable to purchased scrap costs. A firm submitting a report of price increases implemented pursuant to section 2 of this special rule shall submit a supporting schedule showing the following facts, by major product category: the price implemented, the base price, the current or scheduled price, the production for calendar year 1973, and the firm's best estimate of production for calendar year 1974.

(b) Any firm adjusting the price for any steel item pursuant to section 3 of this special rule shall, not later than March 15, 1974, submit a report to the Council providing information on purchased scrap costs and price levels for steel items as of February 28, 1974. Within 15 days after the close of each accounting month, a firm adjusting the price for any steel item pursuant to section 3 of this special rule shall submit an additional report to the Council providing information on price adjustments and changes in purchased scrap costs which have occurred since the last report.

(c) (i) Each firm subject to this rule shall submit not later than March 15, 1974, a special report to the Council providing information on estimated cost levels for the firm's product lines through July 31, 1974.

(ii) The special report should be submitted using CLC-22 and supporting Schedule C forms and should provide the following information:

(A) The current period shall be from July 1, 1974, to July 31, 1974;

(B) Estimated cost increases or decreases shall be the net of those increases or decreases incurred after January 31, 1974;

(C) Estimated scrap costs shall be stated separately from other costs;

(D) Estimated energy and energy related costs shall be separately identified.

5. *Effect on previous special rules.* The price increases permitted by § 2 of this special rule shall be considered approvals of prenotification submitted on or after January 1, 1974 (insofar as they do not reflect costs incurred subsequent to January 31, 1974) and deferred by § 3 of Special Rule Number 5.

6. *Effective date.* This special rule shall be effective at 11:59 p.m., e.s.t., February 28, 1974.

[FR Doc.74-5064 Filed 2-28-74;4:58 pm]

Proposed Rules

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

DEPARTMENT OF STATE

Bureau of Security and Consular Affairs

[22 CFR Part 51]

[Docket No. SD–105]

PASSPORTS

Limitation on Issuance or Extension

Notice is hereby given that the amendment to the regulations set forth in tentative form below is proposed by the Administrator of the Bureau of Security and Consular Affairs for the Secretary of State. The proposed amendment will add a new subparagraph to § 51.70 of Subpart E, Part 51, which enumerates the cases where a passport, except for direct return to the United States, will be denied when possession of a valid passport will facilitate the applicant's ability to engage or continue to engage in conduct which violates the laws of the United States or frustrates the law enforcement functions of the United States government. The new subparagraph would add to paragraph (a) of § 51.70, cases where an applicant has been subpoened under 28 USC 1783 to appear and give testimony in a matter involving Federal prosecution for, or grand jury investigation of, a felony.

Prior to adoption of the amendment to the regulations, consideration will be given to any comments, suggestions or objections thereto which are submitted in writing to the Passport Office, Bureau of Security and Consular Affairs, Department of State, Washington, D.C., 20524, Attn: Legal Division. Comments received on or before April 1, 1974 will be available for public inspection in Room 320 of the Department's Passport Office at 1425 K Street NW., Washington, D.C., Monday through Friday of each week from 8:00 a.m. to 4:00 p.m. (area code 202–382–1531).

This amendment is proposed under the authority of Sec. 1, 44 Stat. 887, Sec. 4, 63 Stat. 111, as amended; 22 USC 211a, 2658; EO 11295, 36 FR 10603; 3 CFR 1966–70 Comp. page 507.

In consideration of the foregoing, it is proposed that 22 CFR 51.70(a) be amended by adding a new subparagraph to read as follows:

§ 51.70 Denial of Passports.

(a) * * *

(5) The applicant is the subject of a subpoena issued pursuant to Section 1783 of Title 28, United States Code, in a matter involving Federal prosecution for, or grand jury investigation of, a felony.

For the Secretary of States.

Dated: January 9, 1974.

[SEAL] BARBARA M. WATSON,
Administrator, Bureau of Security and Insular Affairs.

[FR Doc.74–4899 Filed 3–1–74;8:45 am]

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 1079]

MILK IN THE DES MOINES, IOWA, MARKETING AREA

Notice of Proposed Suspension of Certain Provisions of the Order

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), the suspension of certain provisions of the order regulating the handling of milk in the Des Moines, Iowa, marketing area is being considered for the month of March 1974.

All persons who desire to submit written data, views, or arguments in connection with the proposed suspension should file the same with the Hearing Clerk, Room 112–A, Administration Building, United States Department of Agriculture, Washington, D.C. 20250, not later than March 7, 1974. All documents filed should be in quadruplicate.

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 provisions proposed to be suspended are as follows:

In § 1079.14(a), the words "50 percent in September through March and 100 percent in April through August of"

STATEMENT OF CONSIDERATION

The proposed suspension would remove the 50 percent limit on diversion of producer milk by a cooperative association acting as a handler with respect to the milk of producers diverted by the association for the account for such association from a pool plant to a nonpool plant. At present milk diverted by a cooperative association during the months of September through March may not exceed 50 percent of the larger of: (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.

The suspension was requested by Mid-America Dairymen, Inc., a cooperative association representing the majority of producers on the Des Moines market. This association states that producer milk pooled on the market during December 1973 was almost 30 percent greater than during December 1972, while producer milk utilized in Class I decreased by 2.7 percent during this same period. Consequently, milk normally associated with the Des Moines order will be unable to be pooled unless the diversion limit is suspended for the month of March.

Relaxation of diversion privileges was considered, among other issues, at a hearing held in May of 1973. A recommended decision issued on February 22, 1974, proposes greater diversion allowances (through expansion of the base on which such allowances are computed) during all months of the year, applicable to proprietary handlers as well as to cooperative associations. Therefore, it is appropriate for data, views, and arguments to focus on the propriety of suspending the diversion limitations applicable to both cooperative associations and proprietary handlers as contained in paragraphs 14(a) and (b) of the order, respectively.

Signed at Washington, D.C. on: February 26, 1974.

E. L. PETERSON,
Administrator, Agricultural Marketing Service.

[FR Doc.74–4924 Filed 2–28–74; 9:10 am]

Agricultural Stabilization and Conservation Service (Agricultural Adjustment), Department of Agriculture

[7 CFR Part 729]

PEANUTS

Proposed Determination for 1974–75 Marketing Year

Pursuant to section 358(c) of the Agricultural Adjustment Act of 1938, as amended (7 U.S.C. 1358(c)), the Secretary of Agriculture is preparing to determine whether the supply of any type or types of peanuts for the 1974–75 marketing year will be insufficient to meet the estimated demand for cleaning and shelling purposes. Section 358(c)(2) of the Act, as amended, reads in part as follows:

Notwithstanding any other provision of law, if the Secretary of Agriculture determines, on the basis of the average yield per acre of peanuts by types during the preceding five years, adjusted for trends in yields and abnormal conditions of production affecting yields in such five years, that the supply of any type or types of peanuts for an marketing year, beginning with the 1951–52 marketing year, will be insufficent to meet the estimated demand for cleaning and shelling purposes at prices at which the Commodity Credit Corporation may sell for such purposes peanuts owned or controlled by it, the State allotments for those States producing such type or types of peanuts shall be increased to the extent determined by the Secretary to be required to meet such demand but the allotment for any State may not be increased under this provision above the 1947 harvested acreage of peanuts for such State. The total increase so determined shall be apportioned among such States for distribution among farms producing peanuts of such type or types on the basis of the average acreage of peanuts of such type or types in the three years immediately preceding the year for which the allotments are being determined. The additional acreage so required shall be in addition to the national acreage allotment, the production from such acreage shall be in addition to the national marketing quota, and the increase in acreage allotted under this provision shall not be considered in establishing future State, county or farm acreage allotments.

Prior to determining whether the supply of any type or types of peanuts for the 1974–75 marketing year will be insufficient under section 358(c) of the Act to meet the estimated demand for cleaning and shelling, consideration will be given to any data, views and recommendations relating thereto which are submitted in writing to the Director, Tobacco and Peanut Division, Agricultural Stablization and Conservation Service, United States Department of Agriculture, Washington, D.C. 20250. To be sure of consideration, any such submission must be postmarked not later than April 3, 1974.

All written submissions made pursuant to this notice will be made available for public inspection at the office of the Director during regular business hours (8:15 a.m. to 4:45 p.m.) (7 CFR 1.27(b)).

Signed at Washington, D.C. on February 26, 1974.

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

[FR Doc.74-4896 Filed 3-1-74;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Social Security Administration

[20 CFR Part 405]

Subpart R—Provider Reimbursement Determinations and Appeals

[Regulations No. 5]

FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

Provider Reimbursement Review Board and Provider Appeals

Notice is hereby given, pursuant to the Administrative Procedure Act (5 U.S.C. 553), that the amendments to the regulations set forth below in tentative form are proposed by the Commissioner of Social Security, with the approval of the Secretary of Health, Education, and Welfare. The proposed amendments (1) create a new Subpart R, entitled "Provider Reimbursement Determinations and Appeals," to implement the provisions of section 1878 of the Social Security Act, 42 U.S.C. 1395oo, as added by section 243 of the Social Security Amendments of 1972, P.L. 92–603, which established a Provider Reimbursement Review Board independent of the jurisdiction of the Social Security Administration and its fiscal intermediaries; and (2) relocate the substance of §§ 405.490 through 450.-499i of Subpart D of Regulations No. 5 in the new Subpart R to provide for an orderly structure of regulations applicable to providers' appeals of cost reimbursement determinations and decisions under the Federal Health Insurance for the Aged program. It is intended that the proposed amendments to Regulations No. 5, with respect to the Provider Reimbursement Review Board, be effective for cost reporting periods ending on or after June 30, 1973. (See § 405.1801(c)(2).)

Prior to the final adoption of the proposed amendments to the regulations, consideration will be given to any data, views, or arguments pertaining thereto which are submitted in writing in triplicate to the Commissioner of Social Security, Department of Health, Education, and Welfare Building, Fourth and Independence Avenue SW., Washington, D.C. 20201, on or before April 3, 1974.

Copies of all comments received in response to this notice will be available for public inspection during regular business hours at the Washington Inquiries Section, Office of Public Affairs, Social Security Administration, Department of Health, Education, and Welfare, North Building, Room 3193, 330 Independence Avenue SW., Washington, D.C. 20201.

The proposed regulations are to be issued under the authority contained in sections 1102, 1871, 1878, 49 Stat. 647, as amended, 79 Stat. 331, as amended, 86 Stat. 1421; 42 U.S.C. 1302, 1395hh, and 1395oc.

(Catalog of Federal Domestic Assistance Program No. 13.800, Health Insurance for the Aged—Hospital Insurance.)

Dated: February 12, 1974.

J. B. CARDWELL,
Commissioner of Social Security.

Approved: February 26, 1974.

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

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

1. The heading to Subpart D is revised to read as follows:

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

§§ 405.490–405.499i [Revoked]

2. Sections 405.490–405.499i of Subpart D are hereby revoked.

3. A new Subpart R is added to read as follows:

Subpart R—Provider Reimbursement Determinations and Appeals

Sec.

AUTHORITY: The provisions of this Subpart R issued under sections 1102, 1871, and 1878, 49 Stat. 647, as amended, 79 Stat. 331, as amended, 86 Stat. 1421; 42 U.S.C. 1302, 1395hh, 1395oo.

§ 405.1801 Introduction.

(a) *Definitions.* As used in this subpart:

(1) "Intermediary determination" (see § 405.1803) means, with respect to a provider of services which has filed a cost report in accordance with §§ 405.406 and 405.453(i), a determination as to the

amount of total program reimbursement due the provider for items and services furnished to individuals for which payment may be made under title XVIII of the Social Security Act for the period covered by such report. For purposes of appeal to the Provider Reimbursement Review Board, the term "intermediary determination" shall be synonymous with the term "intermediary's final determination" as that latter term is used in section 1878(a) of the Act.

(2) "Intermediary hearing" means that hearing provided for in § 405.1809.

(3) "Board" means the Provider Reimbursement Review Board established in accordance with section 1878 of the Act, 42 U.S.C. 1395oo, and § 405.1845.

(4) "Board hearing" means that hearing provided for in section 1878(a) of the Act (42 U.S.C. 1395oo(a)), and § 405.1835.

(5) "Secretary's review" means that review provided for in section 1878(f) of the Act (42 U.S.C. 1395oo(f)) and § 405.1875.

(b) *General.* Under the program of health insurance for the aged and disabled, the amount paid to any provider of services—i.e., hospital, skilled nursing facility, or home health agency—for covered items and services furnished beneficiaries is, pursuant to the Social Security Act, the "reasonable cost" of such services. The principles of reimbursement for determining reasonable costs are contained in Subpart D of this part. In order to be reimbursed for such reasonable costs of covered services furnished program beneficiaries, providers of services are obliged to file cost reports with their intermediaries as specified in § 405.453(f).

In addition to the aforementioned providers of services, health maintenance organizations, group practice prepayment plans, physical therapy clinics, rehabilitation agencies, public health agencies, and federally funded clinics are also entities participating in the Medicare program which are obliged to file periodic cost reports and are reimbursed on a cost basis. Therefore, it is intended that the administrative appeal procedures, as set forth in this subpart, will be applicable to such entities to the maximum extent possible. (See § 405.1877 for exception.)

(c) *Effective dates.* (1) The provisions of §§ 405.1801–405.1833 inclusively, §§ 405.1881, 405.1883, 405.1885, 405.1887, and 405.1889 shall apply to all cost reporting periods ending on or after December 31, 1971; and

(2) The provisions of §§ 405.1835–405.1877 inclusive shall apply solely to cost reporting periods ending on or after June 30, 1973.

NOTE: See § 405.1885(e) for applicability of 3-year period in reopening a determination when the reopening action was undertaken after May 27, 1972.

§ 405.1803 Intermediary determination and notice of amount of program reimbursement.

(a) Upon receipt of a provider's cost report, or amended cost report where permitted or required, the intermediary shall, within a reasonable period of time (see § 405.1835(b)), analyze the report, undertake any necessary audit of the report, and furnish the provider and other parties as appropriate (see § 405.1805) a written notice reflecting the intermediary's determination of the amount of program reimbursement. The notice shall (1) explain the intermediary's determination of total program reimbursement due the provider for the reporting period covered by the cost report or amended cost report; (2) relate this determination to the provider's claimed total program reimbursement due the provider for this period; (3) explain the amount(s) and the reason(s) why, by appropriate reference to law, regulations, or program policy and procedures, this determination may differ from the provider's claim; and (4) inform the provider of its right to an intermediary or Board hearing, as appropriate (see §§ 405.1809, 405.1811, 405.1815, and 405.1835–405.1843).

(b) The intermediary's determination as contained in a notice of amount of program reimbursement shall constitute the basis for making the retroactive adjustment (required by § 405.454(f)) to any program payments made to the provider during the period to which the determination applies, including the suspending of further payments to the provider in order to recover, or to aid in the recovery of, any overpayment identified in the determination to have been made to the provider, notwithstanding any request for hearing on the determination the provider may make under § 405.1811 or § 405.1835. Any such suspension shall remain in effect as specified in § 405.373(a).

§ 405.1805 Parties to intermediary determination.

The parties to the intermediary's determination of the amount of program reimbursement shall be the provider and any other entity found by the intermediary to be a related organization of such provider (see § 405.427).

§ 405.1807 Effect of intermediary determination.

The determination shall be final and binding on the party or parties to such determination unless: (a) an intermediary hearing is requested in accordance with § 405.1811 and an intermediary hearing decision rendered in accordance with § 405.1831; or (b) the intermediary determination is revised in accordance with § 405.1885; or (c) a Board hearing is requested in accordance with § 405.1835 and a hearing decision rendered pursuant thereto.

§ 405.1809 Intermediary hearing procedures.

Each intermediary shall establish and maintain procedures in accordance with these regulations, for resolving any issue which may arise between the intermediary and a provider as to the amount of program reimbursement due the provider or due the health insurance program. These procedures shall provide for a hearing on the intermediary's reasonable cost determination contained in a notice of amount of program reimbursement (see § 405.1803) when a timely filed request for a hearing on this determination is made by the provider to the intermediary and the amount of program reimbursement at issue is at least $1,000 but less than $10,000.

§ 405.1811 Right to intermediary hearing; time, place, form, and content of request for intermediary hearing.

(a) The provider who has been furnished a notice of amount of program reimbursement may request an intermediary hearing if (1) it is dissatisfied with the intermediary's determination contained in such notice and (2) the amount of program reimbursement in issue is at least $1,000 but less than $10,000. Such request must be in writing and be filed with the intermediary within 180 calendar days after the date of the notice of program reimbursement. No other individual, entity, or party has the right to an intermediary hearing.

(b) Such request must (1) identify the aspect(s) of the determination with which the provider is dissatisfied, and (2) explain why the provider believes the determination on these matters is incorrect, and (3) be submitted with any documentary evidence the provider considers necessary to support its position.

(c) Following the timely filing of the request for hearing, the provider may identify in writing, prior to the onset of the hearing proceedings, additional aspects of the determination with which it is dissatisfied and furnish any documentary evidence in support thereof. If such additional aspects are submitted, the hearing officer may postpone the hearing to allow for his examination of such additional aspects.

§ 405.1813 Failure to timely request an intermediary hearing.

Where a provider requests an intermediary hearing on an intermediary's determination (as contained in a notice of amount of program reimbursement) after the time limit prescribed in § 405.1811, the designated intermediary hearing officer or panel of hearing officers shall dismiss the request and furnish the provider a written notice which explains the time limitation, except that for good cause shown, the time limit prescribed in § 405.1811 may be extended. However, no such extension shall be granted if the request therefor is filed more than 3 years after the date of the notice of amount of program reimbursement.

§ 405.1815 Parties to the intermediary hearing.

The parties to the intermediary hearing shall be the parties to the intermediary determination and any other entity determined by the intermediary to be a related organization of such provider. Neither the intermediary nor the Social Security Administration are parties (see § 405.1819).

§ 405.1817 Hearing officer or panel of hearing officers authorized to conduct intermediary hearing; disqualification of officers.

The intermediary hearing provided for in § 405.1809 shall be conducted by a hearing officer or panel of hearing officers designated by the intermediary. Such hearing officer or officers shall be persons knowledgeable in the field of health care reimbursement. The hearing officer or officers shall not have had any direct responsibility for the program reimbursement determination with respect to which a request for hearing is filed; no hearing officer (or officers) shall conduct a hearing in a case in which he is prejudiced or partial with respect to any party, or where he has any interest in the matter pending for determination before him. Notice of any objection which a party may have with respect to a hearing officer shall be presented in writing to such officer by the objecting party at the party's earliest opportunity. The hearing officer shall consider the objection and shall, at his discretion, either proceed in the conduct of the hearing or withdraw. If the hearing officer does not withdraw, the objecting party may, after the hearing, present his objections to an executive official of the intermediary, who shall rule promptly on the objection.

§ 405.1819 Conduct of intermediary hearing.

The hearing shall be open to all parties thereto(see § 405.1815) and to representatives of the intermediary and of the Bureau of Health Insurance (see § 405.-1815). The hearing officer(s) shall inquire fully into all of the matters at issue and shall receive into evidence the testimony and any documents which are relevant and material to such matters. If the hearing officer(s) believes that there is relevant and material evidence available which has not been presented at the hearing, he (they) may, at any time prior to the mailing of notice of the decision, reopen the hearing for the receipt of such evidence. The order in which the evidence and the allegations shall be presented and the conduct of the hearing shall be at the discretion of the hearing officer(s).

§ 405.1821 Prehearing discovery and other proceedings prior to the intermediary hearing.

(a) Prehearing discovery shall be permitted upon timely request of any party. To be timely, a request for discovery and inspection shall be made before the beginning of the hearing. A reasonable time for inspection and reproduction of documents shall be provided by order of the hearing officer(s).

(b) If, in the discretion of the hearing officer(s), the purpose of defining the issues more clearly would be served, the hearing officer(s) may schedule a prehearing conference. For this purpose, a single member of a panel of hearing officers, when such is the case, may be appointed to act for the panel with respect to prehearing activities.

§ 405.1823 Evidence at intermediary hearing.

Evidence may be received at the intermediary hearing even though inadmissible under the rules of evidence applicable to court procedure. The hearing officer(s) shall rule on the admissibility of evidence.

§ 405.1825 Witnesses at intermediary hearing.

The hearing officer(s) may examine the witnesses and shall allow the parties and their representatives to do so. Parties to the proceedings may also cross-examine witnesses.

§ 405.1827 Record of intermediary hearing.

A complete record of the proceedings at the intermediary hearing shall be made and transcribed in all cases. It shall be made available to any party upon request. The record will not be closed until a decision (see § 405.1831) has been issued.

§ 405.1829 Authority of hearing officer(s) at intermediary hearing.

(a) The hearing officer(s) in exercising his authority must comply with all the provisions of title XVIII of the Act and regulations issued thereunder, as well as with rulings issued under the authority of the Commissioner of Social Security (see § 422.408 of this chapter), and with the general instructions issued by the Social Security Administration in accordance with the Secretary's agreement with the intermediary.

(b) The determination of a fiscal intermediary that no payment may be made under title XVIII of the Act for any expense incurred for items and services furnished to an individual because such items and services are excluded from coverage pursuant to section 1862 of the Act, 42 U.S.C. 1395y (see Subpart C of this part), shall not be reviewed by the hearing officer(s). Such determination shall be reviewed only in accordance with the provisions of Subparts G and H of this part.

§ 405.1831 Intermediary hearing decision and notice.

The hearing officer(s) shall, on a timely basis, render a decision in writing based on the evidence in the record; such decision shall constitute the final determination of the intermediary. In such decision, he will cite applicable law, regulations, and Social Security Administration general instructions as well as findings on all the matters in issue at the hearing. A copy of the decision will be mailed to all parties to the hearing at their last known addresses.

§ 405.1833 Effect of intermediary hearing decision.

The intermediary hearing decision provided for in § 405.1831 shall be final and binding upon all parties to the hearing unless such intermediary determination is revised in accordance with § 405.1885.

§ 405.1835 Board hearing; right to Board hearing.

(a) The provider (but no other individual, entity, or party) has a right to a hearing before the Board about any matter designated in § 405.1801(a)(1), if:

(1) An intermediary determination has been made with respect to such provider; and

(2) The provider has filed a written request for a hearing before the Board under the provisions described in § 405.-1841; and

(3) The amount in controversy (as determined in § 405.1839(a)) is $10,000 or more.

(b) Notwithstanding the provisions of paragraph (a)(1) of this section, the provider also has a right to a hearing before the Board about any such matter if an intermediary's determination is not rendered within 12 months after receipt by the intermediary of a provider's cost report or amended cost report (as permitted or as required to furnish sufficient data for purposes of making such determination—see § 405.1803(a)) provided such delay was not occasioned by the fault of such provider.

§ 405.1837 Group appeal.

The provision of § 405.1835 shall apply to any group of providers of services if each provider of services in such group is identified as one which would, upon the filing of a request for hearing before the Board (but without regard to the provisions of § 405.1835(a)(3)) be entitled to such a hearing, but only if the matters in controversy involve a common question of fact, or of interpretation of law or regulations, and the amount in controversy (see § 405.1839(b)) is, in the aggregate, $50,000 or more.

§ 405.1839 Amount in controversy.

(a) The $10,000 amount in controversy will be computed by deducting the adjusted total reimbursable program costs from the total reimbursable program costs (less any amounts excluded by section 1862 of the Act) claimed by the provider.

(b) The $50,000 amount in controversy will be computed by deducting the adjusted total reimbursable program costs (in the aggregate) from the total reimbursable program costs (less any amounts excluded by section 1862 of the Act) which are claimed in the aggregate by the providers and are related to a common issue or interpretation of law or regulations.

§ 405.1841 Time, place, form, and content of request for Board hearing.

(a) The request for a Board hearing must be filed in writing with the intermediary or Board within 180 days of the date the notice of the intermediary's determination of the amount of program reimbursement was mailed to the provider or, where notice of such determination was not timely rendered, within 180 days after the expiration of the period specified in § 405.1835(b). Such request for Board hearing must identify the

aspects of the determination with which the provider is dissatisfied, explain why the provider believes the determination is incorrect in such particulars, and be accompanied by any documenting evidence the provider considers necessary to support its position. Prior to the commencement of the hearing proceedings, the provider may identify in writing additional aspects of the intermediary's determination with which it is dissatisfied and furnish any documentary evidence in support thereof.

(b) A request for a Board hearing filed after the time limit prescribed in paragraph (a) of this section shall be dismissed by the Board, except that for good cause shown, the time limit may be extended. However, no such extension shall be granted by the Board if such request is filed more than 3 years after the date the notice of the intermediary's determination is mailed to the provider.

§ 405.1843 Parties to Board hearing.

(a) The parties to the Board hearing shall be the provider, the intermediary that rendered the determination being appealed (see § 405.1833), and any other entity found by the intermediary to be a related organization of such provider.

(b) Neither the Secretary nor the Social Security Administration may be made a party to the hearing. However, the Board may call as a witness any employee or officer of the Department of Health, Education, and Welfare having personal knowledge of the facts and the issues in controversy in a hearing pending before the Board and may call as a consultant to the Board in connection with any such hearing any individual designated by the Secretary for such purpose. (See § 405.1863.)

§ 405.1845 Composition of Board.

(a) The Board will consist of five members appointed by the Secretary. All shall be knowledgeable in the field of cost reimbursement. At least one shall be a certified public accountant. Two Board members shall have been associated with or have represented providers of services.

(b) The term of office for Board members shall be 3 years, except that initial appointments may be for such shorter terms as the Secretary may designate to permit staggered terms of office. No member shall serve more than two consecutive 3-year terms of office. The Secretary shall have the authority to terminate a Board member's term of office for good cause.

(c) One member of the Board shall be designated by the Secretary as Chairman thereof and shall coordinate and direct the administrative activities of the Board, and shall have such other authority which may be granted to him by the Board.

(d) A quorum shall be required for hearings before the Board. Three members, at least one of whom is representative of providers of services, shall be required to constitute a quorum. At least one of said three members shall be a certified public accountant.

§ 405.1847 Disqualification of Board members.

No Board member shall join in the conduct of a hearing in a case in which is prejudiced or partial with respect to any party or in which he has any interest in the matter pending for decision before him. Notice of any objection which a party may have with respect to a Board member shall be presented in writing to such Board member by the objecting party at its earliest opportunity. The Board member shall consider the objection and shall, in his discretion, either proceed to join in the conduct of the hearing or withdraw. If he does not withdraw, the objecting party may petition the Board, presenting its objection and reasons therefor, and be entitled to a ruling thereon before the hearing can proceed.

§ 405.1849 Establishment of time and place of hearing by the Board.

The Board shall fix the time and place for the hearing and shall mail written notice thereof to the parties at their last known addresses, not less than 30 days prior to the scheduled time. Either on its own motion or for good cause shown by a party, the Board may, as appropriate, reschedule, adjourn, postpone, or reopen the hearing, provided that reasonable written notice is given to the parties.

§ 405.1851 Conduct of Board hearing.

The Board hearing shall be open to the parties, to representatives of the Bureau of Health Insurance, and to such other persons as the Board deems necessary and proper. The Board shall inquire fully into all of the matters at issue and shall receive into evidence the testimony of witnesses and any documents which are relevant and material to such matters. If the Board believes that there is relevant and material evidence available which has not been presented at the hearing, it may at any time prior to the mailing of notice of the decision, reconvene the hearing for the receipt of such evidence. The order in which the evidence and the allegations shall be presented and the conduct of the hearing shall be at the discretion of the Board.

§ 405.1853 Prehearing discovery and other proceedings prior to the Board hearing.

(a) Prehearing discovery shall be permitted upon timely request of a party. To be timely, a request for discovery and inspection shall be made before the beginning of the hearing. A reasonable time for inspection and reproduction of documents shall be provided by order of the Board.

(b) If, in the discretion of the Board, the purpose of defining the issues more clearly would be served, the Board may schedule a prehearing conference. For this purpose, a single member of the Board may be appointed to act for the Board with respect to prehearing activities.

§ 405.1855 Evidence at Board hearing.

Evidence may be received at the Board hearing even though inadmissible under the rules of evidence applicable to court procedure. The Board shall rule on the admissibility of evidence.

§ 405.1857 Subpoenas.

When reasonably necessary for the full presentation of a case, the Board may, either upon its own motion or upon the request of a party, issue subpoenas for the attendance and testimony of witnessses and for the production of books, records, correspondence, papers, or other documents which are relevant and material to any matter in issue at the hearing. Parties who desire the issuance of a subpoena shall, not less than 10 days prior to the time fixed for the hearing, file with the Board a written request therefor, designating the witnesses or documents to be produced, and describing the address, or location thereof with sufficient particularity to permit such witnesses or documents to be found. The request for a subpoena shall state the pertinent facts which the party expects to establish by such witnesses or documents and whether such facts could be established by other evidence without the use of a subpoena. Subpoenas, as provided for above, shall be issued in the name of the Board, and the Social Security Administration shall assume the cost of the issuance and the fees and mileage of any witness so subpoenaed, as provided in 42 U.S.C. 405(b) (section 205(b) of the Act).

§ 405.1859 Witnesses.

Witnesses at the hearing shall testify under oath or affirmation, unless excused by the Board for cause. The Board may examine the witnesses and shall allow the parties or their representatives to do so. If the Board examines a witness, it may allow the parties to suggest matters as to which they desire the witness to be questioned, and the Board may question the witness with respect to such matter if they are relevant and material to any issue pending for decision before it.

§ 405.1861 Oral argument and written allegations.

The parties, upon their request, shall be allowed a reasonable time for the presentation of oral argument or for the filing of briefs or other written statements of allegations as to facts or law. Copies of any brief or other written statement shall be filed in sufficient number that they may be made available to all parties and to the Bureau of Health Insurance.

§ 405.1863 Administrative policy at issue.

Where a party to the Board hearing puts into issue an administrative policy which is interpretative of the law or regulations, the Board will promptly notify the Bureau of Health Insurance.

§ 405.1865 Record of Board hearing.

A complete record of the proceedings at the hearing shall be made and transcribed in all cases. It shall be made available to the parties upon request. The

record will not be closed until a decision has been issued.

§ 405.1867 Sources of Board's authority.

In exercising its authority to conduct the hearings described herein, the Board must comply with all the provisions of title XVIII of the Act and regulations issued thereunder, as well as rulings issued under the authority of the Commissioner of Social Security (see § 422.408 of this chapter).

§ 405.1869 Scope of Board's decision making authority.

The Board shall have the power to affirm, modify, or reverse a determination of an intermediary with respect to a cost report and to make any other modifications on matters covered by such cost report (including modifications adverse to the provider or other parties) even though such matters were not considered in the intermediary's determination.

§ 405.1871 Board hearing decision and notice.

(a) The Board shall, as soon as practicable after the conclusion of its hearing, render a written decision based upon the record made at such hearing, the record established in support of the determination of the intermediary (see § 405.1833), and such other evidence as may be obtained or received by the Board. Such Board decision shall be supported by substantial evidence when the record of Board hearing is viewed as a whole. A copy of the decision shall be mailed to all parties to the hearing at their last known addresses and, at the same time, to the Secretary.

(b) The decision of the Board provided for in paragraph (a) of this section shall be final and binding upon all parties to the hearing before the Board unless it is reviewed, and reversed or modified (adversely to the provider) by the Secretary, or unless it is remanded to the Board by the Secretary and given a less favorable decision by such Board (see § 405.1875), or unless it is revised in accordance with § 405.1885.

§ 405.1873 Board's jurisdiction.

(a) The Board shall decide questions relating to its jurisdiction to grant a hearing, including (1) the timeliness of an intermediary determination (see § 405.1835(b)), and (2) the right of a provider to a hearing before the Board when the amount in controversy is in issue (see §§ 405.1835(a)(3) and 405.1837).

(b) The determination of a fiscal intermediary that no payment may be made under title XVIII of the Act for any expenses incurred for items and services furnished to an individual because such items and services are excluded from coverage pursuant to section 1862 of the Act, 42 U.S.C. 1395y (see Subpart C of this part), shall not be reviewed by the Board. (Such determination shall be reviewed only in accordance with the provisions of Subpart G or H of this part.)

§ 405.1875 Secretary's review.

(a) The Secretary, on his own motion and at his discretion, may elect to review a decision of the Board which is favorable in whole or in part to the provider. A right to such a review does not vest in parties to the Board's decision.

(b) The Secretary will promptly notify all parties to the Board's hearing of his election to review the Board's decision and of the result of such review.

(c) If the Secretary affirms a decision of the Board, the decision of the Board is the final administrative decision.

(d) If the Secretary reverses or modifies a decision of the Board adversely to a provider, he must do so within 60 days after notification to the provider of the Board's decision. In such case further review of the Secretary's decision is provided (see § 405.1877)

(e) The Secretary may remand the case to the Board with a request that the Board further consider the matter at issue in those cases where the oBard's decision was favorable to the provider. In such situations where the Board issues a new decision (after remand by the Secretary) less favorable to the provider, such decision will constitute an adverse decision by the Secretary. (See § 405.1877).

§ 405.1877 Judicial review.

Section 1878(f) of the Act, 42 U.S.C. 1395oo(f), permits judicial review only where the Secretary, adversely to the provider, modifies or revrses the Board's decision (see § 405.1875(e)). Such action shall be brought in the District Court of the United States for the judicial district in which the provider is located or in the District Court for the District of Columbia. Section 1878(f) of the Act permits only "providers of services" (as defined in section 1861(u) of the Act, 42 U.S.C. 1395x(U)) to seek judicial review. Health maintenance organizations, group practice prepayment plans, physical therapy clinics, rehabilitation agencies, public health agencies, and federally funded clinics are not providers of services.

§ 405.1881 Appointment of representative.

A provider or other party may be represented by legal counsel or any other person it apoints to act as its representative at the proceedings conducted in accordance with §§ 405.1819 and 405.1851.

§ 405.1883 Authority of representative.

A representative appointed by a provider or other party may accept or give on behalf of the provider or other party any request or notice relative to any proceeding before a hearing officer or the Board. A representative shall be entitled to present evidence and allegations as to facts and law in any proceeding affecting the party he represents and to obtain information with respect to a request for an intermediary hearing or a Board hearing made in accordance with §§ 405.1811, 405.1835, or § 405.1837 to the same extent as the party he represents. Notice to a provider or other party of any action, determination, or decision, or a request for the production of evidence by a hearing officer or the Board sent to the representative of the provider or other party shall have the same force and effect as if it had been sent to the provider or other party.

§ 405.1885 Reopening a determination or decision.

(a) A determination of an intermediary, a decision by a hearing officer or panel of hearing officers, a decision by the Board, or a decision of the Secretary may be reopened with respect to findings on matters at issue in such determination or decision, by such officer, Board, or Secretary, as the case may be, either on motion of such officer, Board, or Secretary, or on the motion of the provider affected by such determination or decision to revise any matter in issue at any such proceedings. Any such reopening must be undertaken within 3 years of the date of the notice of the intermediary or Board hearing decision, or where there has been no such decision, any such reopening must be undertaken within 3 years of the date of notice of the intermediary determination. No such determination or decision may be reopened after such 3-year period except as provided in paragraphs (d) and (e) of this section.

(b) A determination or a hearing decision rendered by the intermediary shall be reopened and revised by the intermediary if, within the aforementioned 3-year period, the Social Security Administration notifies the intermediary that such determination or decision is inconsistent with the applicable law, regulations, or general instructions issued by the Social Security Administration in accordance with the Secretary's agreement with the intermediary.

(c) Jurisdiction for reopening a determination or decision rests exclusively with that administrative body that rendered the last determination or decision.

(d) Notwithstanding the provisions of paragraph (a) of this section, an intermediary determination or hearing decision, a decision of the Board, or a decision of the Secretary shall be reopened and revised at any time if it is established that such determination or decision was procured by fraud or similar fault of the provider.

(e) Paragraphs (a) and (b) of this section apply to determinations on cost reporting periods ending on or after December 31, 1971. (See § 405.1801(c).) However, the 3-year period described shall also apply to determinations with respect to cost reporting periods ending prior to December 31, 1971, but only if the reopening action was undertaken after May 27, 1972 (the effective date of regulations which, prior to the publication of this Subpart R, governed the reopening of such determinations).

§ 405.1887 Notice of reopening.

(a) All parties to any reopening described above shall be given written

notice of the reopening. When such reopening results in any revision in the prior decision, said revision or revisions will be mailed to the parties with a complete explanation of the basis for the revision or revisions. Notices of reopenings by the Board shall also be sent to the Secretary.

(b) In any such reopening, the parties to the prior decision shall be allowed a reasonable period of time in which to present any additional evidence or argument in support of its position.

§ 405.1889 Effect of a revision.

Where a revision is made in a determination or decision on the amount of program reimbursement after such determination or decision has been reopened as provided in § 405.1885, such revision shall be considered a separate and distinct determination or decision to which the provisions of §§ 405.1811, 405.1835, 405.1875 and 405.1877 are applicable. (See § 405.1801(c) for applicable effective dates.)

[FR Doc.74-4885 Filed 3-1-74;8:45 am]

CIVIL AERONAUTICS BOARD

[14 CFR Part 250]

[Docket No. 26253; Order 73-12-93; EDR-260]

EMERGENCY RESERVATIONS PRACTICES INVESTIGATION

Order Instituting Investigation; Tentative Findings and Conclusions; and Notice of Proposed Rulemaking; Correction

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 21st day of December 1973.

In the matter of Amendments to 14 CFR Part 250—Priority Rules, Denied Boarding Compensation Tariffs and Reports of Unaccommodated Passengers.

Ordering paragraph 7 of the Order (39 FR 823, January 3, 1974) should have read as follows:

7. The application of American Airlines, Inc., for authorization to engage in discussions among air carriers regarding "no-show" and related problems (Docket 26232), be and it hereby is dismissed without prejudice; and

[SEAL] EDWIN Z. HOLLAND,
Secretary.

FEBRUARY 19, 1974.

[FR Doc.74-4920 Filed 3-1-74;8:45 am]

COST ACCOUNTING STANDARDS BOARD

[4 CFR Part 408]

ACCOUNTING FOR COSTS OF COMPENSATED PERSONAL ABSENCE

Proposed Cost Accounting Standard

Notice is hereby given of a proposed Cost Accounting Standard on Accounting for Costs of Compensated Personal Absence which the Cost Accounting Standards Board is considering for promulgation to implement further the requirements of section 719 of the Defense Production Act of 1950, as amended, Public Law 91-379, 50 U.S.C. App. 2168. When promulgated, the Standard will be used by all relevant Federal agencies and national defense contractors and subcontractors.

The proposed Standard, if adopted, will be one of a series of Cost Accounting Standards which the Board is promulgating "to achieve uniformity and consistency in the cost-accounting principles followed by defense contractors and subcontractors under Federal contracts." (See section 719(g) of the Defense Production Act of 1950, as amended.) It is anticipated that any contractor receiving an award of a contract on or after the effective date of this Standard will be required to follow it as of the beginning of his next fiscal year following the date of such award.

The Cost Accounting Standards Board solicits comments of the proposed Cost Accounting Standard from any interested person on any matter which will assist the Board in its consideration of the proposal.

Interested persons should submit written data, views, and arguments concerning the proposed Cost Accounting Standard to the Cost Accounting Standards Board, 441 G Street, NW., Washington, D.C. 20548.

To be given consideration by the Board in its determination relative to final promulgation of the Cost Accounting Standard covered by this notice, written submissions must be made to arrive no later than Monday, May 6, 1974. All written submissions made pursuant to this notice will be made available for public inspection at the Board's office during regular business hours.

PART 408—ACCOUNTING FOR COSTS OF COMPENSATED PERSONAL ABSENCE

Sec.

AUTHORITY: Sec. 719 of the Defense Production Act of 1950, as amended, Pub. L. 91-379, 50 U.S.C. App. 2168

§ 408.10 General applicability.

This Standard shall be used by defense contractors and subcontractors under Federal contracts entered into after the effective date hereof and by all relevant Federal agencies in estimating, accumulating and reporting costs in connection with the pricing, administration, and settlement of all negotiated prime contract and subcontract national defense procurements with the United States in excess of $100,000, other than contracts or subcontracts where the price negotiated is based on (a) established catalog or market prices of commercial items sold in substantial quantities to the general public, or (b) prices set by law or regulation.

§ 408.20 Purpose.

The purpose of this Standard is to improve the measurement of costs of vacation, sick leave, holiday, and other compensated personal absence, and to increase the probability that the measured costs are allocated to the proper cost objectives. In addition, this Standard provides criteria for the identification of costs of compensation for personal absence with the cost accounting periods in which the qualifying service was performed and with the cost objectives of those periods.

§ 408.30 Definitions.

(a) The following definitions are prominent in this Standard.

(1) Compensated personal absence. Any period for which an employer pays compensation directly to an employee, in accordance with an established plan or custom of the employer, while the employee is absent from work because he is ill, or because he is on vacation, observing a holiday, performing jury duty or military training, or engaged in other personal activities.

(2) Cost accounting period. A time period which is determined in accordance with the provisions of 4 CFR Part 406 and used for contract cost accumulation and allocation. (Normally, the contractor's fiscal year.)

(3) Employee qualification period. A regularly recurring period of fixed or determinable length during which the performance of a required amount of qualifying service by an employee entitles him to receive or to become eligible to receive a determinable amount of compensated personal absence in accordance with an established plan or custom of the employer.

(4) Matured entitlement. That amount of compensated personal absence, expressed in units of time, e.g., days, hours, for which an employee has qualified by reason of service in completed employee qualification periods. (Because the ultimate use of the benefit by the employee may be conditional, the amount of matured entitlement should not be confused with the amount of the employer's liability for the related costs.

(5) Probationary period. A stated minimum period of service which is required of a newly hired or rehired employee before that employee earns any entitlement to a particular benefit.

(6) Unmatured entitlement. That pro rata portion of the total compensated personal absence which can be earned by service in an employee qualification period which corresponds to the proportion of qualifying service which has already been performed in an uncompleted employee qualification period. Unmatured entitlement may be considered to exist even though actual entitlement to some amount of benefits may arise only when all necessary service in the period has been completed.

(b) The following modifications of definitions set forth in Part 400 of this chapter are applicable to this Standard: None.

§ 408.40 Fundamental requirement.

(a) The costs of compensated personal absence shall be assigned to cost accounting periods as follows:

(1) If employees perform services in one cost accounting period and thereby earn entitlement to compensated personal absence which may be taken in another cost accounting period, the estimated costs of the compensation shall be assigned to the cost accounting period or periods in which the qualifying services were performed, provided that (i) the compensation is paid or payable in accordance with, or entitlement arises from, an established plan or custom of the employer, (ii) the employee qualification period is one year or less, and (iii) the employer's obligation to provide the compensation is reasonably certain and the costs of future utilization of the entitlement which was earned by service in a given cost accounting period can be estimated with reasonable accuracy as of the end of that period.

(2) If personal absence is compensated under conditions other than those described in paragraph (a)(1) of this section, the costs of that compensation shall be assigned to the cost accounting period in which the compensation is paid or in which the employer's obligation to provide the compensation becomes certain, whichever is earlier; provided, however, that if the qualification period exceeds one year, such costs may be assigned to cost accounting periods on any basis which properly relates the costs with the cost accounting periods during which the service was performed to earn the compensation. An employer's obligation to provide compensated personal absence shall be considered certain if the custom requires or the terms of the plan provide, without material exception, that the employee will receive a specific amount of compensated personal absence or the monetary equivalent in lieu thereof.

(b) When the costs of compensated personal absence which are assigned to a cost accounting period are allocated to the final cost objectives of that period, the method of allocation shall produce substantially the same result with respect to each final cost objective as if such costs had been allocated by the use of a uniform rate which reflected the anticipated costs of the entire cost accounting period.

§ 408.50 Techniques for application.

(a)(1) Each plan or custom or type of compensated personal absence shall be considered separately in making the determinations which are required by this Standard.

(2) The contractor shall maintain records of service, entitlement, and utilization which are sufficient to permit the determinations and estimates which are required by this Standard. For this purpose, consideration shall be given to the relative ease or difficulty of making and verifying such determinations and estimates, to the materiality of the amounts involved, and to the use of techniques such as statistical sampling.

(b) The identification of the qualification period and the determination of whether service in one cost accounting period gives rise to entitlement in a different cost accounting period shall be made for each plan or custom in accordance with the following paragraphs:

(1) Where a plan or custom imposes a probationary period of six months or longer, then the determination of whether service in one cost accounting period gives rise to entitlement in a different cost accounting period shall be made as if no part of such service were designated as "probationary." Where a plan or custom imposes a probationary period of less than six months, then the fact that an employee must complete the probationary period in order to earn entitlement is insufficient, of itself, to establish a presumption that service in one cost accounting period is intended to earn entitlement in another cost accounting period; there must be additional evidence to support such a determination.

(2) The contractor's established accounting policy for holiday pay shall determine the cost accounting period in which such costs are recognized.

(3) Where the plan or custom provides that the amount of compensated personal absence which can be earned in a qualification period increases with length of service, such increase shall be considered to be earned only in the qualification period in which the service requirements have been achieved, and the costs thereof shall be assigned only to the cost accounting period or periods which contained that qualification period. For example, if in the fifth year the employee earned three weeks of vacation rather than two, the third week shall be considered to have been earned only in the fifth year.

(c)(1) An employer's obligation to provide compensated personal absence shall be considered reasonably certain, in accordance with § 408.40(a)(1)(iii), if the custom requires, or the terms of the plan provide for, payment to the employee for unused matured entitlement, or for unmatured entitlement, or both, in the event that the employee is terminated by act of the employer for lack of work or other reasons not involving disciplinary action.

(2) The costs of entitlement which was earned by service in a given cost accounting period shall be considered capable of estimation with reasonable accuracy as of the end of that period, in accordance with § 408.40(a)(1)(iii), only if it is reasonable to expect that at least 80 percent of the entitlement to compensated personal absence which is earned in each cost accounting period will ultimately be utilized by the employees. This determination shall be made in accordance with the following paragraphs:

(i) Utilization shall be considered to include payments in lieu of compensated personal absence.

(ii) Where the plan or custom directly states the amount of entitlement which can be earned in a given eligibility period, e.g., "one day for each calendar month of service, but not to exceed 10 days," then service will be considered to earn entitlement only up to that amount. However, where the plan or custom limits the maximum amount of entitlement which can be accumulated or which can be carried forward from year to year, or the length of time existing entitlement can be retained, then service in a given eligibility period will be considered to create new entitlement as if such a limitation did not exist; the limitation will be considered to reduce the amount of entitlement which is utilized rather than the amount of entitlement which is earned.

(d) The determination of whether a particular type of compensated personal absence meets the requirements of § 408.40(a)(1) shall initially be made with respect to the first cost accounting period for which a contractor must comply with the terms of this Standard, and such determination shall constitute the basis for assigning the costs of compensated personal absence in all future cost accounting periods, except that if any change is made in the existing plan or custom or a new plan or custom is adopted, and such change or adoption could change the relative certainty of the employer's obligation or the capability to estimate the costs thereof with reasonable accuracy, in accordance with the criteria stated in paragraph (c) of this Section, then a new determination shall be made with repsect to the first cost accounting period in which such new or changed plan will be in effect.

(e)(1) The amount of costs of compensated personal absence which is assigned to any cost accounting period in accordance with § 408.40(a)(1) shall be the amount paid for such compensation during the cost accounting period plus the estimated cost of the obligation for such compensation as of the end of the cost accounting period less the estimated cost of the obligation for such compensation as of the beginning of the cost accounting period. If the cost of the obligation cannot reasonably be estimated or no such obligation exists, then the amount of costs of compensated personal absence to be assigned to any cost accounting period shall be the amount paid for such compensation in that period.

(2) The estimated cost of the obligation at the beginning and at the end of a cost accounting period shall be determined in accordance with the following paragraphs:

(i) The estimated cost shall include a reasonable estimate of the amount which will be required to meet the obligation for the matured entitlement which exists at that time, if material in amount.

(ii) The estimated cost shall also include a reasonable estimate of the additional amount which would be required to meet the obligation for the unmatured entitlement which exists at that time if such unmatured entitlement were considered to be matured entitlement, if material in amount.

(iii) The estimated cost shall be reduced by an amount which, based on

past experience and anticipated conditions, is a reasonable estimate of the costs relating to matured and unmatured entitlement which will be forfeited, will expire, or will otherwise not be used by the employees or compensated by the employer, if material in amount.

(iv) The cost of providing a given amount of compensated personal absence shall be estimated consistently either in terms of current or of anticipated wage rates. Estimates may be made with respect to individual employees, but such individual estimates shall not be required if the total cost with respect to all of the employees in the plan can be estimated with reasonable accuracy by the use of sample data, experience, or other appropriate means.

(v) Service during probationary periods shall not be excluded from the estimation of the costs of the obligation at the beginning or end of any cost accounting period, or from the base which is used to assign the costs of compensated personal absence to any cost accounting period or to allocate these costs to cost objectives if such exclusion would materially affect the amount of such costs assigned to any cost accounting period or the allocation of such costs to cost objectives.

(vi) Except as provided in paragraph (f) of this section, the estimated cost of the obligation at the end of any cost accounting period covered by this Standard shall also be the estimated cost at the beginning of the following cost accounting period.

(3) Where costs of compensated personal absence are allocated to cost objectives during a cost accounting period using an estimated interim rate, then appropriate adjustments may be required when the cost is subsequently determined in accordance with paragraph (e) of this section. Such adjustments shall be accomplished in the same cost accounting period; they shall not be accomplished by increasing or decreasing the interim rate in a subsequent period.

(f) If an existing benefit plan or custom is changed or a new plan or custom is adopted on or after the first date on which a contractor must comply with the terms of this Standard, and the effect of such change is to change the cost accounting period in which any part of the costs of compensated personal absence would otherwise have been recognized, then the amount of costs to be recognized in the year of change shall be determined as if the changed or new plan or custom had been in effect in that and all preceding years. However, this provision shall not apply to the effect of that part of a change in a plan or custom which increases the rate at which entitlement is earned by a given amount of qualifying service, and only to the extent that the change applies to service in eligibility periods ending in the current cost accounting period and prospectively.

§ 408.60 Illustrations.

Assume in each case below, that the contractor's cost accounting period ends on December 31.

(a) To facilitate the determinations which are required by § 408.50(a), the following interpretations of plan terminology are offered:

(1) Examples of plan terminology which would tend to indicate that service in one cost accounting period earns entitlement to benefits which may be taken in another cost accounting period:

(i) "Each year, on the anniversary of his date of employment, an employee will receive 10 days of vacation * * *" Comment: An employee must work one year to receive entitlement. Even if the first year were stated to be a "probationary period," § 408.50(b)(1) requires that a probationary period of six months or longer not be viewed as a probationary period for the purpose of the required determination.

(ii) "On January 1, each employee who has been employed at least one year will be credited with 5 days of sick leave entitlement * * *" Comment: An employee must work at least one year to receive entitlement. (See preceding comment.)

(iii) "An employee earns one day of vacation in the following year for each calendar month of service in the current years * * *" Comment: Notwithstanding any probationary period, the wording of the plan makes it evident that service in one year earns benefits in the following year.

(iv) "An employee who is hired between April 1 and September 30 receives two weeks of vacation in the following year; an employee who is hired between October 1 and March 31 receives one week of vacation in the current year; no vacation may be taken until the employee has completed at least 6 months of service * * *." Comment: An employee who is hired between July 1 and December 31 of any year will perform service which will earn entitlement which cannot be used until the following year. Although he must work at least six months before he can use his entitlement, in accordance with § 408.50(b)(1), the six months is not to be considered as a probationary period.

(2) Examples of plan terminology which would tend to indicate that service in one cost accounting period does not earn entitlement to benefits which may be taken in another cost accounting period:

(i) "On January 1, each employee will receive a sick leave credit of 5 days. An employee hired after January 1 will receive a pro-rata credit for the remaining portion of the year. Unused sick leave may not be carried over into the following year * * *." Comment: There is no minimum required service; anyone who was an employee on January 1 receives the entitlement regardless of his length of service. In addition the next sentence indicates that service in only part of the year reduces benefits in that year, not in future years.

(ii) "Each year an employee will be compensated for up to 10 days absence because of personal or family illness * * * benefits may not be carried over to succeeding years." Comment: There is no stated minimum service requirement. Any employee is eligible. Eligibility must be used in the same year it arises.

(iii) "Employees will be compensated for time spent on jury duty up to a maximum of sixty working days per year, provided that the employee has been employed by the Company for at least 90 days at the time he is called for jury duty * * *" Comment: An employee who was hired on November 1, 1973, would become eligible for jury duty pay at any time after January 29, 1974. Because of the 90 day minimum service requirement, service in one year could be viewed as generating entitlement which is used in another period. However, § 408.50(b)(1) provides that service in one cost accounting period shall not be construed to give rise to entitlement in another cost accounting period solely because of the existence of a probationary period of less than six months; there must be additional evidence to support such a determination.

(b) Company B's plan provides that an employee earns one day of vacation to be taken in 1978 for each full calendar month of employment in 1977. All vacation earned in 1977 must be utilized before the end of 1978 or the entitlement will expire, but it is the Company policy that all employees take their vacation. An employee who leaves the Company in 1978 for any reason will be paid for all unused vacation entitlement which was earned in 1977, provided that the employee has completed at least six months service.

(1) The entitlement to vacation to be taken in 1978 clearly relates to the service which was performed in 1977. The employer's obligation to provide the compensation is reasonably certain, in accordance with § 408.50(c)(1), because the plan provides for the payment of unused matured entitlement to laid-off employees; a further restriction on the right to receive payment for unmatured benefits, such as the six-month probationary period in Company B's plan or a restriction on the maximum amount of unused matured entitlement for which a laid-off employee may be paid should not be construed to negate a presumption that the obligation is reasonably certain if it is reasonable to believe that most of the employer's obligation for unused matured entitlement would be paid in the event of a major layoff.

(2) The qualification period is each calendar month and entitlement matures monthly. However, the plan permits the forfeiture of matured entitlement in two ways—expiration and failure to complete the probationary period. If the costs of the plan are to be recognized on the accrual basis, it must also be demonstrated, in accordance with § 408.50(c)(2), that at least 80 percent of the entitlement which arises from service in any cost accounting period will ultimately be utilized.

(3) If Company B's plan meets the "utilization test," then, in accordance with § 408.50(e), the amount of vacation costs to be recognized in 1977 would be the sum of vacation payments in 1977 plus the estimated cost of the obligation for entitlement at December 31, 1977, less

the estimated cost of the obligation for entitlement at January 1, 1977; in accordance with § 408.50(e)(2)(vi), the obligation at January 1, 1977, is the same as the obligation which existed at December 31, 1976. Because entitlement matures at the end of each month, there is no unmatured entitlement on December 31 of any year. The estimated cost of the obligation at the beginning and at the end of 1977 must be reduced by an amount which, based on past experience and anticipated future conditions, represents a reasonable allowance for vacation entitlement which will not be used or otherwise paid for by December 31, 1978, and will therefore expire, if believed to be material in amount.

(4) Company B maintains a monthly record of each employee's vacation entitlement. Probationary employees are credited with full entitlement each month on the premise that most will complete their probationary period. At the end of each month the Company extends each employee's entitlement times his current rate of pay to determine its liability for vacation entitlement and records the liability in its formal accounting records.

(i) The maintenance of such a record as described would facilitate estimating the cost of the obligation for matured benefits at December 31. However, Company B is not required to maintain a record in this form to comply with the terms of the Standard, nor is it required to reflect the indicated liability in its formal accounting records. The Standard does not prescribe the form of the necessary records. Section 408.50(a) only requires that the records be sufficient to permit the estimates and determinations which are required by the terms of the Standard.

(ii) Company B, if it so chose, could record no entitlement for a probationary employee until the employee had completed the probationary period. However, in accordance with § 408.50(e)(2)(v), such probationary service must be given effect in the estimate of the cost of the obligation for matured entitlement at December 31 unless its exclusion would not materially affect the estimate.

(c) Company C's plan provides that each employee will be credited with an annual vacation entitlement of 10 days on the anniversary of his date of employment. Vacation must be used within two years thereafter or forfeited. There is no pay in lieu of unused entitlement except on termination of employment. An employee who leaves for any reason will be paid for all unused matured entitlement which remains from his last anniversary date. An employee who is laid off will also be paid pro-rata for vacation earned since his anniversary date.

(1) Assume that Company C's utilization experience is such that the Company is required to recognize vacation costs on an accrual basis. Company C maintains a record of each employee's matured entitlement and accrues a liability for matured entitlement in its formal accounting records. However, each employee will also have unmatured entitlement at December 31, and, in accordance with § 408.50(e)(2)(ii), Company C must include such unmatured entitlement in its estimate of the cost of its obligation for entitlement at December 31 if the amount is believed to be material. The Company does not maintain records of unmatured entitlement. One way in which Company C might estimate the amount and cost of unmatured entitlement at December 31 is by the use of sample data. It could select a sample of employees, estimate the cost of each employee's entitlement, and project the results of the sample to the entire Company. The method of sample selection should be reasonable in the circumstances. For example, selection of all employees whose name began with the letter "F" would not appear to be biased, but selection of all employees of a given department might be biased because the average seniority or wage rate in that department might not be representative of the entire company. The sample size should be sufficient to yield acceptable accuracy. Sample data could also be used, where appropriate, to develop the estimated allowance for forfeitures.

(2) The following illustrates one method of estimating the cost of the obligation at December 31 with respect to individual employees, in accordance with § 408.50(e):

John Doe—Anniversary date July 10, 1972:	
Unused matured entitlement—24h at $5	$120
Full months of service since anniversary—5:	
Unmatured entitlement=80h×5/12=33.3h at $5	167
Total	287
Less allowance for forfeitures—3½ percent	10
Net obligation	277

(3) If Company C had many employees and anniversary dates were randomly distributed throughout the year, then it might be reasonable to assume that each employee had 40 hours of unmatured entitlement at any given time (½ x 80 hrs.); alternatively, factors which applied to gross payroll or employment data might be developed from historic data. The Standard does not prescribe the method to be followed; any method which is reasonable, which can be supported by reference to appropriate records, and which yields sufficient accuracy is acceptable in the circumstances.

(d) Company D's plan provides that an employee who will have completed at least one year of service on or before September 30, 1977, will receive two weeks of vacation in 1977; an employee who will have completed at least nine months of service but less than one year on September 30, 1977, will receive one and one-half weeks of vacation in 1977; an employee who will have completed at least six months of service but less than nine months on September 30, 1977, will receive one week of vacation in 1977; an employee who will have completed less than six months of service on September 30, 1977, will receive no vacation in 1977. All such vacation entitlement must be taken between April 1, 1977, and December 31, 1977, or be forfeited; there are no provisions for carryover or pay in lieu of unused vacation under any circumstances. If an employee takes his full vacation and then fails to complete the necessary service to September 30, his final paycheck will be reduced accordingly.

(1) The qualification period is the year ending September 30, 1977, because this is the period which must be completed in order to earn a full two-week vacation entitlement; this period does not coincide with the Company's cost accounting period. Because all vacation must be used by December 31, there can be no unused matured entitlement at December 31. However, service after September 30, 1977, creates unmatured entitlement which may be utilized in 1978. Consequently, if Company D customarily pays its employees for unmatured entitlement on lay-off, then it has an obligation for unmatured entitlement at December 31, 1977.

(2) In order for Company D to determine whether, under its plan, the costs of future utilization of the entitlement which was earned by service in a given cost accounting period are capable of estimation with reasonable accuracy as of the end of that period, in accordance with § 408.40(a)(1)(iii), it must calculate its percentage of utilization as prescribed in § 408.50(c)(2). In making this calculation with respect to an employee who was hired on, say, May 1, 1977, the service rendered by that employee from May 1 to September 30 shall not be considered to create any entitlement; the provisions of § 408.50(c)(2)(ii) state that service will be considered to create entitlement only up to the stated limit in the plan; this plan provides that no entitlement will arise from service only in that period. A similar rule would apply to service in fractional periods between the other stated dates; these may be regarded as probationary periods of less than six months during which no entitlement is earned, even if the result is that different employees must thereby undergo probationary periods of unequal lengths. However, in accordance with § 408.50(e)(2)(v), such probationary service may not be excluded from the base which is used to assign the costs of compensated personal absence to cost accounting periods or to allocate those costs to cost objectives if such exclusion would materially affect the amount of costs so assigned or allocated.

(3) If Company D is required to estimate the cost of its obligation for unmatured entitlement at December 31, 1977,

then, in accordance with § 408.50(e)(2)(iv), the cost may be estimated on either an individual or a group basis.

(i) An employee who was hired on November 1, 1977, will be entitled to the same amount of vacation as of September 30, 1978, as one who was not hired until January 1, 1978, that is, one and one-half weeks. Company C may assume that the employee will work 11 months, from November 1 to September 30, and at December 31 he has completed two elevenths of the required service. Alternatively, Company C may view the period from November 1 to December 31 as a probationary period which created no entitlement and that no unmatured entitlement exists for that employee at December 31. However, in accordance with § 408.50(e)(2)(v), such probationary service may not be excluded if the effect of such exclusion would be material.

(ii) If Company D wishes to estimate the cost of its obligation at December 31, 1977, on a group basis, then it might estimate the total amount of qualifying service which will be performed in the qualification period ending September 30, 1978, the amount of vacation costs which will result from such service, and the fraction of such total service and costs which is represented by the service which was performed between October 1 and December 31, 1977. If, for example, the service between October 1 and December 31, 1977, represents one quarter of the total expected service in the eligibility period ending September 30, 1978, then the estimated cost of the obligation at December 31, 1977, is one quarter of the total estimated cost. The estimate must be reduced to allow for anticipated forfeitures if such are expected to be material in amount.

(iii) If Company D does not customarily pay a laid-off employee for unmatured entitlement, then it has no obligation for unmatured entitlement at December 31, 1977. § 408.50(e)(1) states that, in the absence of a beginning and ending obligation, the cost of compensated personal absence which is assigned to a cost accounting period shall be the amount paid in that period. Therefore, Company D may not use an equalizing accrual to distribute anticipated vacation costs at a uniform rate over the "vacation year" ending September 30, 1978.

(e) Company E's sick leave plan provides that an employee will be compensated for time lost due to illness up to a maximum of 10 days during his first full calendar year of employment. The maximum allowable amount increases with the length of the employee's service. There are no carryover provisions or pay for unused sick leave entitlement. Despite the fact that the amount of the maximum benefit increases with the length of the employee's service, service in a given qualification period gives rise to entitlement only in that period and there is no carry-forward of entitlement or obligation to succeeding qualification periods. Therefore, there is no estimated obligation at the beginning and at the end of the cost accounting period. In accordance with § 408.50(e)(1), the sick leave costs assignable to the cost accounting period are the amounts paid for sick leave in that year.

(f) Company F's personnel manual provides that any person who has been employed for at least six months shall be compensated for personal absence because of jury duty. Based on its past experience, the company is able to estimate the amounts it expects to pay to compensate employees for jury duty in any given cost accounting period with a high degree of accuracy.

The initial minimum service period is a probationary period. Service in any given period does not earn entitlement to any particular amount of compensation for jury duty, and the plan does not provide for payment for unused benefits; therefore, the plan does not qualify for accrual accounting. Because it is apparent that the plan does not so qualify, it is not necessary to maintain detailed records of jury duty absence in order to comply with the recordkeeping provisions of § 408.50(a)(2).

(g) All of the salary costs of Company G's salaried employees are charged to service, administrative, or overhead functions. No accounting entries are made to segregate costs of compensated personal absence of these employees from their other salary costs, although other records are maintained to control the total amount of such absences.

(1) If the costs of the service, administrative, or overhead functions are allocated at rates which are determined for the cost accounting period, then this method produces substantially the same result as if the costs of compensated personal absence had been allocated by the use of a uniform rate and would comply with the requirements of § 408.40(b).

(2) If a similar policy were followed in the case where engineers salaries were directly allocated to two or more final cost objectives, or both intermediate and final cost objectives, so that costs of compensated personal absence were charged directly to the jobs on which the individuals were working when paid, then this would not comply with the requirements of § 408.40(b) because the result would not be substantially the same as if a uniform annual rate had been used. Only if all such salaries were directly allocated to a single cost objective, as might be the case with personnel assigned to an overseas base for the performance of a single contract, would this practice not violate that requirement.

(h) Company H determines a "charging rate" for each employee. The charging rate includes an allowance for compensated personal absence based on average experience. As the employee performs services, the related cost objectives are charged for the services at the charging rate, the employee is paid at his normal rate, and the excess is credited to an accrued liability for each benefit. As benefits are paid, the costs are charged against the accrued liabilities. The amount of each accrued liability is adjusted at the end of the fiscal year, and any difference is adjusted through appropriate overhead accounts in accordance with Company policy.

(1) This method, per se, is not a violation of § 408.40(b), because it is designed to allocate the estimated annual costs of compensated personal absence at a rate which is determined for the cost accounting period.

(2) The computation of the rate must comply with the criteria established by this Standard in relation to the benefits offered. For example, if the terms of the sick leave plan are such that, in accordance with this Standard, the costs should be recognized in the cost accounting period when they are paid, then the computation should be intended to amortize the expected costs of sick leave payments over the activity of the cost accounting period, leaving no accrued liability for sick leave at the end of the fiscal year.

(i) University I allocates the salaries of professorial staff to Government contracts on the basis of estimates of effort under OMB A–21. This method complies with the requirement of § 408.40(h) that the method of allocation shall produce substantially the same result as if the costs of compensated personal absence had been allocated by the use of a uniform rate. However, this does not change the basis on which such allocations under OMB A–21 must be supported.

§ 408.70 Exemptions.

None for this Standard.

§ 408.80 Effective date.

(a) The effective date of this Standard is _____.

(b) This Standard shall be followed by each contractor as of the beginning of his next fiscal year following the receipt of a contract subject to the Cost Accounting Standards clause on or after _____.

ARTHUR SCHOENHAUT,
Executive Secretary.

[FR Doc.74–4940 Filed 3–1–74;8:45 am]

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 52]

APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Proposed Revision to the New York Plan

On September 22, 1972 (37 FR 19815, § 52.1677(b)), the Administrator disapproved Part 205 of Subchaper A, Chapter III, Title 6 of New York State's Official Compilation of Codes, Rules and Regulations because it did not provide for the reporting of periodic increments of progress toward compliance by affected sources or categories of sources.

On January 17, 1974 supplemental information to the New York State implementation plan was submitted. The supplemental information consisted of a revised Part 205 of Subchapter A, Chapter III, Title 6 of New York State's Official

Compilation of Codes, Rules and Regulations.

The revised Part 205 would change the final compliance date in the regulation from December 31, 1974 to January 31, 1974. This would require that all affected sources be brought into compliance within 18-months after plan approval.

This notice is issued to advise the public that, as required by section 110 of the Clean Air Act (42 U.S.C. 1857c-5 (a)), comments may be submitted on whether the proposed revision should be approved or disapproved. Only comments received on or before April 3, 1974 will be considered. The Administrator's decision to approve or disapprove the proposed plan revision will be based on whether the revision meets the requirements of section 110(a)(2)(A)-(H), (42 U.S.C. 1857c-5(a)(2)(A)-(H), and EPA regulations in 40 CFR Part 51.

Copies of the proposed plan revision are available for public inspection during normal business hours at the Office of Public Affairs, EPA, Region II, 26 Federal Plaza, New York, N.Y. 10007, and at the New York State Department of Environmental Conservation, Air Pollution Control Program, 50 Wolf Road, Albany, N.Y. 12201. Additional copies are available for public inspection at the Freedom of Information Center, EPA, 401 M Street, SW., Washington, D.C. 20460. All comments should be addressed to the Regional Administrator, Environmental Protection Agency, Region II, 26 Federal Plaza, New York, N.Y. 10007.

(42 U.S.C. 1857c-5(a))

Dated: February 26, 1974.

JOHN QUARLES,
Acting Administrator.

[FR Doc.74-4927 Filed 3-1-74;8:45 am]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[14 CFR Parts 71, 73]

TEMPORARY RESTRICTED AREAS

Proposed Designation

Correction

In FR Doc. 74-3818 appearing in the issue of February 19, 1974, on page 6124, column three, the first five lines under "3. R- 6315 C Brave Crew 74, Tex" should read as follows:

"*Boundaries.* Beginning at Lat. 31°00'00" N., Long. 99°00'00" W.; to Lat. 30°47'00" N., Long 98°03'00" W.; to Lat. 30°50'00" N., Long. 97°44'00" W.; to Lat. 30°33'00" N., Long. 97°43'30" W.; to point of beginning."

Federal Railroad Administration

[49 CFR Part 215]

[Dockets RSFC-1, 2, 3; Notice 4]

RAILROAD FREIGHT CAR SAFETY STANDARDS

Notice of Hearing

On January 22, 1974, the Federal Railroad Administration (FRA) proposed several amendments to Part 215, Railroad Freight Car Safety Standards (39 FR 3567).

On February 27, 1974, the Congress of Railway Unions filed a written request for hearing on the proposed amendments. FRA has decided to grant this request. Accordingly, notice is hereby given that the FRA will conduct a public hearing at 10:00 a.m., on March 18, 1974, in Room 2230, Nassif Building, 400 Seventh Street SW., Washington, D.C. The period for filing of written comments is not being extended and will expire on March 15, 1974.

The hearing will be an informal one, not a judicial or evidentiary type of hearing. There will be no cross-examination of persons making statements. A staff member of the FRA will make an opening statement outlining the matter set for hearing. Interested persons will then have an opportunity to present their oral comments. At the completion of all initial oral statements, those persons who wish to make rebuttal statements will be given the opportunity to do so in the same order in which they made their initial statements. Additional procedures for conducting the hearing will be announced at the hearing.

Interested persons may present oral or written statements at the hearing. All statements will be made a part of the record of the hearing and be a matter of public record. Persons who wish to make oral statements at the hearing should notify the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Room 5101, Nassif Building, 400 Seventh Street SW., Washington, D.C. 20590 before March 15, 1974, stating the amount of time required for their initial statement.

This notice is issued under the authority of the Federal Railroad Safety Act of 1970 (84 Stat. 971 et. seq.; 45 U.S.C. 421 et. seq) and § 1.49(n) of the regulations of the Office of the Secretary of Transportation (49 CFR 1.49(n)).

Issued in Washington, D.C. on March 1, 1974.

DONALD W. BENNETT,
Chief Counsel.

[FR Doc.74-5117 Filed 3-1-74;12:11 pm]

National Highway Traffic Safety Administration

[49 CFR Part 571]

[Docket No. 74-11; Notice 1]

MOTOR VEHICLE SAFETY STANDARDS

Exterior Protection

The purpose of this notice is to propose an amendment to Standard No. 215, *Exterior Protection*, (49 CFR 571.215) to revise the longitudinal impact test procedure specified in Paragraph S7.1.4.

In two petitions for rulemaking submitted by Triumph Motors and Austin Morris divisions of British Leyland (UK) Ltd., it was pointed out that compliance with the longitudinal pendulum impact test requirements at a height of 20 in called for a bumper at least 48 in in width in order to satisfy the S7.1.4 requirement that the test device remain inboard of the corner test positions. Under the current provisions, three impacts at a height of 20 in must be conducted with the midpoint of the impact line of the device 12 in apart laterally from its position in any prior impact. As noted by British Leyland, the implication of such a test requirement is the imposition of a design standard that would prohibit development of vehicles with bumpers narrower than 48 in. This was not the intention of the NHTSA. Therefore, it is proposed that the standard be amended to specify in paragraph S7.1.4 that where the distance between the corner test positions is less than 48 in, the midpoint of the impact line of the test device during the longitudinal impact test procedures shall be at any position within 12 in of the vehicle centerline. As explained in § 571.4, this means that the vehicle must be capable of complying with the standard's requirements when impacted by the test device at any point within 12 in of the vehicle centerline.

Modifying the longitudinal impact test procedure in this manner will remove the current 48-in minimum restriction on vehicle bumper design without sacrificing the standard's intended level of low-speed protection across the full width of the vehicle. Adoption of a British Leyland suggestion that the number of required impacts be reduced would have the effect of weakening this desired level of bumper performance.

Triumph Motors expressed concern in its petition that its bumpers would not be capable of satisfying the specified longitudinal test procedure due to the presence of large overriders which interfere with the required three impacts at a height of 20 in. The NHTSA has no intention of requiring manufacturers to alter the configuration of their vehicle bumpers in order to enable the specified number of test impacts to occur inboard of the vehicle overriders. Where the distance between the corner test positions is insufficient to position the three impacts (whether or not they involve overriders) at 20 in as presently specified, the amendment proposed above would be applicable.

In order to make it clear that the test device can be at any position inboard of the outermost test points, the words "at any position" would be inserted into the first sentence of S7.1.4.

In consideration of the foregoing, it is proposed that 49 CFR 571.215, Motor Vehicle Safety Standard No. 215, be amended as follows:

§ 571.215 **Standard No. 215; Exterior Protection with amendments effective Sept. 1, 1974, and Sept. 1, 1975.**

* * * * *

S7.1 * * *

S7.1.4 For each impact, align the vehicle so that it touches, but does not move, the test device, with the vehicle's longitudinal centerline perpendicular to the plane that includes plane A of the test device and with the test device at any position inboard of the vehicle corner test

positions specified in S7.2. However, for vehicles whose corner test positions are less than 48 in apart, place the device so that the midpoint of the impact line is at any position within 12 in of the vehicle centerline (not necessarily entirely inboard of the vehicle corner test positions).

* * * * *

Interested persons are invited to submit comments on the proposal. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5221, 400 Seventh Street SW., Washington, D.C. 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the comment closing date indicated below will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date, and comments received after the closing date and too late for consideration in regard to the action will be treated as suggestions for future rulemaking. The NHTSA will continue to file relevant material as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Comment closing date: April 18, 1974.

Proposed effective date: 30 days after publication of final rule.

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

Issued on February 27, 1974.

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

[FR Doc.74-4904 Filed 3-1-74;8:45 am]

Notices

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

DEPARTMENT OF THE INTERIOR

Office of Hearings and Appeals

[Docket No. M 74–52]

ACME COAL COMPANY ET AL.

Petition for Modification of Application of Mandatory Safety Standard

Notice is hereby given that in accordance with the provisions of section 301(c) of the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. section 861 (c) (1970), Acme Coal Company et al. have filed a petition to modify the application of 30 CFR 75.1400 to the following 46[1] mines located in Pennsylvania:

No. 5 Lykens Vein Slope, Acme Coal Co., Williamstown;
No. 2 Slope, Bernitsky Bros. Coal Co., Silver Creek;
Top Split Mammoth Slope, Bush Coal Co., Good Spring;
Tracy Slope, Colket Coal Co., Donaldson;
D and J Slope, D and J Coal Co., Trevorton;
No. 4 Rock Slope, Duke Associates, Shamokin;
No. 3 Slope, Fireside Mining Co., Big Mine Run;
Nos. 1 and 2 Slopes, Hatter Coal Co., Hegins;
No. 3 Skidmore Slope, Hegins Mining Co., Good Spring;
No. 5 Slope, Hegins Mining Co., Mount Pleasant;
Herring Brothers Slope, Herring Bros. & Lucas Coal Co., Donaldson;
Herring & Spancake Slope, Herring & Spancake Coal Co., Lincoln;
No. 5 Vein Rad Ash Slope, K H and K Coal Co., Mount Pleasant;
Lykens No. 6 Mine, Kintzel Coal Co., Lincoln;
No. 1 Slope Mine, Klinger Coal Co., Branchdale;
No. 4 Slope, M G S Coal Co., Trevorton;
No. 4 Vein Slope, Morata Coal Co., Sagon;
Orchard Slope, Mountain Top Coal Co., Zerbe;
No. 1 Slope, Mountain View Coal Co., Coal Township;
No. 1 Slope, Norwood Mining Co., West Cameron;
White Ash, P and H Coal Co., Primrose;
Orchard Slope, P and M Coal Co., Lincoln;
Seven Foot No. 2 Slope Mine, Polcovich Coal Co., Centralia;
Germantown Slope Mine, R and L Coal Co., Centralia;
Buck Mountain Slope, S and K Coal Co., Wiconisco;
Skidmore Slope, S and T Coal Co., Wiconisco;
Little Vein Slope Mine, Shomper Coal Co., Tower City;
No. 1 Slope, Leroy Snyder Coal Co., Donaldson;
No. 2 Slope, Split Vein Coal Co., Trevorton;
Buck Mountain Slope, Smeltz Coal Co., Wiconisco;
Zero Vein Lykens S. Dip Slope, T & L Coal Co., Trevorton;
No. 4 Vein Slope, Twin Oaks Coal Co., Trevorton;
Buck Mountain Slope, Underkoffler Coal Co., Lykens;
No. 3 Slope, Walaitis Coal Co., Branchdale;
Middle Split Slope, Wilson Coal Co., Valley View;
Skidmore Slope Mine, Williamson Coal Co., Valley View;
Mammoth Slope Mine, Woratyla Coal Co., Zerbe;
Zanella Slope, Zanella Brothers, Locust Gap;
No. 1 Slope, Pine Line #1, Shamokin;
No. 5 Vein Slope, D R Z Coal Co., Sagon;
No. 4 Vein, Shally Coal Co., Ashland;
D and R Slope, D and R Coal Co., Valley View;
Buck Mt. Slope, Miller Coal Co., Williamstown;
Tracy Slope, Wolfgang Coal Co., Donaldson;
Buck Mt. Slope, Marlin Zimmerman Coal Co., Lincoln;
Primrose Slope, Harner Coal Co., Lincoln.

30 CFR 75.1400 reads in pertinent part as follows:

> Cages, platforms, or other devices which are used to transport persons in shafts and slopes shall be equipped with safety catches or other no less effective devices approved by the Secretary that act quickly and effectively in an emergency * * *.

Petitioners seek modification of the portion of 30 CFR 75.1400 which requires safety catches or other no less effective devices on any cages, platforms or other devices which are used to transport persons in shafts and slopes. As an alternative, Petitioners would continue to permit the use of the present haulage systems in the various mines listed above.

In support of their petition, Petitioners state:

(1) There is no safety catch or other device currently available for use in mines with steeply pitched slopes, numerous curves and knuckles. Such conditions exist, petitioners assert, in all of the main haulage slopes of the mines listed above.

(2) The lengths of the slopes range from 200 feet to 4,000 feet; the pitch of the slopes from 20° to 85°.

(3) The steel gunboats used to transport men and supplies along the main haulage slopes are securely fastened to wire ropes, with secondary safety connections around the gunboats and attached to the main ropes.

(4) The safety standard of the ropes attached to the gunboats far exceeds the American National Standards Institute's recommended standard for wire ropes used for mines.

(5) A workable safety catch has not been developed, and, makeshift devices, if installed, would be activated on knuckles and curves when no emergency existed. If activated on a slope of extreme pitch, the makeshift device would cause the conveyance to tumble, thereby increasing, rather than decreasing, the risks to the miners.

Petitioners assert that the alternative method will at all times guarantee more than the measure of protection afforded the miners by the application of the mandatory standard.

Persons interested in this petition may request a hearing on the petition or furnish comments on or before April 3, 1974. Such requests or comments must be filed with the Office of Hearings and Appeals, Hearings Division, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

JAMES R. RICHARDS,
Director, Office of Hearings and Appeals.

FEBRUARY 22, 1974.

[FR Doc.74–4889 Filed 3–1–74;8:45 am]

Office of the Secretary

[Order No. 2508, Amdt. 103]

SPECIFIC LEGISLATION

Delegation of Authority

In FR Doc.74–4217 appearing at page 6749 in the issue for Friday, February 22, 1974, the paragraph designation "(5)" should read "(57)".

[INT DES 74–17]

J. N. "DING" DARLING PROPOSED WILDERNESS AREA; FLORIDA

Notice of Availability of Draft Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, Public Law 91–190, the Department of the Interior has prepared a draft environmental statement for the Proposed J. N. "Ding" Darling Wilderness Area, Florida, and invites written comments on or before April 18, 1974.

The proposal recommends that 2,735 acres of the J. N. "Ding" Darling National Wildlife Refuge, located in Lee County, Florida, be included in the National Wilderness Preservation System.

Copies of the draft statement are available for inspection at the following locations:

[1] Forty-seven mines originally petitioned for a modification of the named safety standard. However, a petition for modification (Docket Number M 74–37) of the same safety standard had been filed by one of the forty-seven mines, namely The Middle Split Slope Mine of the Hatter Coal Company located in Hegins, Pennsylvania. To avoid duplication, the second petition for modification has been deleted.

Bureau of Sport Fisheries and Wildlife
17 Executive Park Drive, NE.
Atlanta, Georgia 30329

Headquarters
J. N. "Ding" Darling National Wildlife Refuge
P.O. Drawer B
Sanibel, Florida 33957

Bureau of Sport Fisheries and Wildlife
Office of Environmental Coordination
Department of the Interior
Room 2246
18th and "C" Streets, NW.
Washington, D.C. 20240

Single copies may be obtained by writing the Chief, Office of Environmental Coordination, Bureau of Sport Fisheries and Wildlife, Department of the Interior, Washington, D.C. 20240. Comments concerning the proposed action should also be addressed to the Chief, Office of Environmental Coordination. Please refer to the statement number above.

Dated February 25, 1974.

WILLIAM A. VOGELY,
Acting Deputy
Assistant Secretary.

[FR Doc.74-4894 Filed 3-1-74;8:45 am]

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

CASH IN LIEU OF COMMODITIES

Value of Donated Commodities for Fiscal Year 1974

Section 6 of the National School Lunch Act, as amended by Public Law 93-150, and the regulations adopted by the Department (7 CFR Part 240) require the Secretary to make an estimate as of February 15 of each fiscal year of the value of agricultural commodities and other foods that will be delivered during such fiscal year to States for school food service programs under the provisions of the Act, as amended; section 416 of the Agricultural Act of 1949, as amended; and section 32 of the Act of August 24, 1935, as amended. They further require that, if the estimated value is less than 90 per centum of the value of such deliveries initially programmed for the fiscal year, the Secretary shall pay to State educational agencies, by not later than March 15 of the same fiscal year, an amount of funds that is equal to the difference between the value of food deliveries initially programmed for such fiscal year and the estimated value, as of February 15, of commodities and other foods to be delivered for such year.

In accordance with these requirements, notice is hereby given that the Secretary has completed the estimates and has determined that the value of commodities and other foods that will be delivered to States for school food service programs during the fiscal year ending June 30, 1974, is not less than 90 percent of the value of the deliveries initially programmed for this fiscal year; therefore, there will be no cash payments under Part 240 for this fiscal year.

Dated: February 28, 1974.

CLAYTON YEUTTER,
Assistant Secretary.

[FR Doc.74-4942 Filed 3-1-74;8:45 am]

Forest Service

SISKIYOU, SIUSLAW & UMPQUA NATIONAL FORESTS CY 1974-75; VEGETATION MANAGEMENT WITH HERBICIDES

Notice of Availability of Final Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Forest Service, Department of Agriculture, has prepared a final environmental statement on vegetation management with herbicides on the Siskiyou, Siuslaw and Umpqua National Forests, Calendar Year 1974-1975. USDA-FS-FES(Adm) 74-35.

The environmental statement concerns the use of selective herbicides to reduce the competition from native vegetation where it hampers forest management activities.

This final environmental statement was transmitted to CEQ on February 20, 1974.

Copies are available for inspection during regular working hours at the following locations:

USDA, Forest Service
South Agriculture Bldg., Room 3230
12th St. & Independence Ave., S.W.
Washington, D.C. 20250

Siskiyou National Forest
1504 N. W. 6th Street
P.O. Box 440
Grants Pass, Oregon 97526

Umpqua National Forest
Federal Office Bldg.
P.O. Box 1008
Roseburg, Oregon 97470

USDA, Forest Service
Pacific Northwest Region
319 S.W. Pine Street
Portland, Oregon 97204

Siuslaw National Forest
545 S.W. 2nd Street
P.O. Box 1148
Corvallis, Oregon 97330

A limited number of single copies are available upon request at the above listed locations.

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.

ROBERT B. TERRILL,
Acting Regional Forester.

FEBRUARY 20, 1974.

[FR Doc.74-4893 Filed 3-1-74;8:45 am]

Packers and Stockyards Administration

FORT PAYNE STOCKYARD ET AL.

Posted Stockyards

Pursuant to the authority delegated under the Packers and Stockyards Act, 1921, as amended (7 U.S.C. et seq.), it was ascertained that the livestock markets named below were stockyards within the definition of that term contained in section 302 of the Act, as amended (7 U.S.C. 202), and notice was given to the owners and to the public by posting notices at the stockyards as required by said section 302, on the respective dates specified below.

Facility number, name, and location of stockyard, and date of posting

ALABAMA

AL-156, Fort Payne Stockyard, Fort Payne, February 19, 1974.

ARKANSAS

AR-149, Boone County Livestock Auction, Harrison, November 27, 1973.
AR-150, Mountain View Livestock Auction, Mountain View, November 27, 1973.

MASSACHUSETTS

MA-105, Coulte's Auction, West Bridgewater, December 19, 1973.

MISSOURI

MO-235, Interstate Producers Livestock Association, Deepwater, February 15, 1974.
MO-234, Four-State Livestock Auction Center, Inc., Diamond, December 27, 1973.

TEXAS

TX-305, Cox Commission Co., Inc., West, February 16, 1974.

VIRGINIA

VA-147, Tidewater Livestock Sales Company, Courtland, January 10, 1974.

Done at Washington, D.C., this 26th day of February, 1974.

EDWARD L. THOMPSON,
Chief, Registrations, Bonds, and Reports Branch, Livestock Marketing Division.

[FR Doc.74-4895 Filed 3-1-74;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[DESI 1002; Docket No. FDC-0211; NDA 10-740]

MERRELL-NATIONAL LABORATORIES

Alertonic Elixir; Withdrawal of Approval of New Drug Application

On October 21, 1970 there was published in the FEDERAL REGISTER (35 FR 16421) a notice of opportunity for hearing on the proposal of the Commissioner of Food and Drugs, to issue an order withdrawing approval of the new drug application for the following drug:

Alertonic Elixir containing in each 45 cubic centimeters: 2 milligrams pipradrol hydrochloride, 10 milligrams thiamine hydrochloride, 5 milligrams riboflavin, 1 milligram pyridoxine hydrochloride, 50 milligrams niacinamide, 100 milligrams choline chloride, 100 milligrams inositol, 100 milligrams calcium glycerophosphate, 1 milligram manganous sulfate, 1 milligram magnesium acetate, 1 milligram zinc acetate, 1 milligram ammonium molybdate, and alcohol; Merrell-National Laboratories, Division of Richardson-Merrell, Inc., 110 Amity Road, Cincinnati, OH 45215 (NDA 10-740).

The basis of the proposed withdrawal of approval was the lack of substantial evidence that Alertonic Elixir is effective for its labeled indications. Subsequent to the notice, Merrell-National Laboratories elected to reformulate the product.

The reformulated product was a liquid preparation containing pipradrol hydrochloride as the only active component. In a notice published in the FEDERAL REGISTER of December 12, 1972 (37 FR 26455), the Food and Drug Administration stated that the reformulated product was regarded as less-than-effective (possibly effective). Studies submitted intended to support its effectiveness have been under review.

Merrell did not request a hearing concerning the original Alertonic formulation, nor did any other person.

All identical, related, or similar products, not the subject of an approved new drug application, are covered by the new drug application reviewed and are subject to this notice. See 21 CFR 130.40 (37 FR 23185, October 31, 1972). Any person who wishes to determine whether a specific product is covered by this notice should write to the Food and Drug Administration, Bureau of Drugs, Office of Compliance (HFD–300), 5600 Fishers Lane, Rockville, MD 20852.

The Commissioner of Food and Drugs pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 505, 52 Stat. 1053, as amended; 21 U.S.C. 355), and the Administrative Procedure Act (5 U.S.C. 554), and under authority delegated to him (21 CFR 2.120), finds that on the basis of new information before him with regard to the drug, evaluated together with the evidence available to him when the application was approved, there is a lack of substantial evidence that the drug will have the effect it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in the labeling thereof.

Therefore, pursuant to the foregoing finding, approval of those parts of new drug application No. 10–740 pertaining to Alertonic Elixir and all amendments and supplements thereto is withdrawn effective on March 14, 1974.

Shipment in interstate commerce of the above-listed drug product or of any identical, related, or similar product, not the subject of an approved new drug application, will thereafter be unlawful.

Dated: February 25, 1974.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.74–4909 Filed 3–1–74;8:45 am]

Office of the Secretary

CENTER FOR DISEASE CONTROL

Statement of Organization, Functions, and Delegations of Authority; Correction

In FR Doc. 74–667 appearing at page 1461 in the issue for January 9, 1974, item (4) under the Office of Information (9A11) appearing on page 1462 should read as follows:

(4) utilizes existing resources in disseminating health messages of the Center.

Dated: February 25, 1974.

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

[FR Doc.74–4919 Filed 3–1–74;8:45 am]

Social Security Administration

ADVISORY COMMITTEE ON MEDICARE ADMINISTRATION, CONTRACTING, AND SUBCONTRACTING

Amended Notice of Public Meeting

Notice is hereby given, pursuant to Public Law 92–463, that the meeting scheduled for Friday, March 8, 1974, of the Advisory Committee on Medicare Administration, Contracting, and Subcontracting established pursuant to section 1114(f) of the Social Security Act, as amended, which advises the Secretary of Health, Education, and Welfare on Medicare matters, has been changed to Monday, March 11, 1974, at 9 a.m. in the conference room on the 31st floor at 299 Park Avenue, New York, New York. This meeting is open to the public. However, there will be no formal agenda and no time allotted for public discussion because the Committee will be entirely involved in drafting its report to the Secretary.

Further information on the Committee may be obtained from Mr. Max Perlman, Executive Secretary of the Committee, Room 585 East Building, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone 301–594–9134. Members of the public planning to attend should notify the Executive Secretary.

(Catalog of Federal Domestic Assistance Program No. 13.800, Health Insurance for the Aged—Hospital Insurance; 13.801, Health Insurance for the Aged—Supplementary Medical Insurance)

Dated: February 27, 1974.

MAX PERLMAN,
Executive Secretary, Advisory Committee on Medicare Administration, Contracting, and Subcontracting.

[FR Doc.74–5063 Filed 3–1–74;9:13 am]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

QUALITY SYSTEM CERTIFICATION PROGRAM

Notice of Issuance and Availability

The Department of Transporation, Federal Aviation Administration (FAA) has issued Advisory Circular (AC) Number 00–41, Subject: FAA Quality System Certification Program. The AC provides information on the new program and it sets forth acceptable means of compliance with its certification requirements.

The new program will be applicable to certain FAA negotiated and two-step solicitations for air traffic control systems and equipment, navigational aids, and related ground based support equipment. Under those solicitations prospective contractors shall submit with their technical proposal a Quality Control System Plan (QCSP). Each plan will be evaluated by the FAA for acceptability and responsiveness in the same manner as the technical proposal is evaluated.

The successful contractor's QCSP will be incorporated into and made a part of his contract and concurrent with the award of the contract he will be issued an FAA Quality Control System Certificate.

The certificate attests to the fact that the contractor's QCSP, facilities, methods and controls were demonstrated as being adequate for his, the contractor's, authentication that the production, inspection, testing and delivery of the products submitted for acceptance by the FAA are, in fact, in conformance with the contractor's approved design, the FAA contract and all its equipment specification requirements. Any departures from his approved QCSP are reviewed by the FAA. Non-conformance with his own approved QCSP will be the basis for "lifting" of his FAA certificate, and ultimately could result in termination of his FAA contract for default.

The information and guidance contained in this Advisory Circular will also be used by FAA to measure the adequacy of other prospective contractor's proposed quality control and inspection system plans which will be required by other FAA type procurements.. These measures will be applied during the precontract award evaluation phase to assist in making the determination of "Responsible Prospective Contractors" as required by the Federal Procurement Regulations (FPR) sub-part 1–1–12.

Advisory Circular Number 00–41 may be obtained from the Department of Transportation, Federal Aviation Administration, Logistics Service, Attention: ALG–380, 800 Independence Avenue SW., Washington, D.C. 20591.

Issued in Washington, D.C. on January 31, 1974.

R. F. FRAKES,
Acting Director, Logistics Service.

[FR Doc.74–4884 Filed 3–1–74;8:45 am]

Office of the Secretary

[OST Docket No. 22; Notice No. 74–7]

CANADIAN NATIONAL RAILWAYS-CENTRAL VERMONT RAILWAY, INC.

Standard Time Zone Boundaries Operating Exceptions

Effective 2:00 a.m. eastern nonadvanced (standard) time Sunday, January 6, 1974, until 2:00 a.m. eastern advanced (daylight saving) time Sunday,

April 27, 1975, the Canadian National Railways-Central Vermont Railway, Inc., is granted exceptions from the standard times of the time zones created by Congress in the Act of March 19, 1918, as amended by the Uniform Time Act of 1966 (15 U.S.C. 260–67). The exceptions permit operation on eastern nonadvanced time from White River Junction, Vermont, and from Massena, New York, both to the border between Canada and the United States, despite the fact that the area concerned is officially on eastern advanced time. These exceptions do not, however, permit the railroad in its public schedules and notices to show the areas concerned as being on other than eastern advanced time.

(Act of March 18, 1918, as amended by the Uniform Time Act of 1966 (15 U.S.C. 260–67); sec. 6(e)(5) of the Department of Transportation Act (49 U.S.C. 1655(e)(5)); sec. 1.59 (b) of the Regulations of the Office of the Secretary of Transportation (49 C.F.R. 1.59 (b).)

Issued in Washington, D.C., on February 26, 1974.

RODNEY E. EYSTER,
General Counsel.

[FR Doc.74-4897 Filed 3-1-74;8:45 am]

CIVIL AERONAUTICS BOARD

[Docket 26458; Order 74-2-107]

ALASKA AIRLINES, INC.

Order of Investigation and Suspension

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 26th day of February, 1974.

By tariff revisions[1] marked to become effective March 1, 1974, Alaska Airlines, Inc. (Alaska) proposes to increase coach fares by 6.5 percent throughout its system except those applicable between Seattle, Anchorage and Fairbanks. First-class fares and various discount fares which are based on a percentage relationship to coach fares would be increased accordingly.

In support of its proposal, Alaska asserts that it has recently experienced substantial increases in fuel prices (the current average cost per gallon is estimated to be 45 percent above that experienced for the year ending September 30, 1973) and that the proposed increase is necessary to offset this fuel cost increase. Alaska has determined the differential between current fuel prices versus the price at December 23, 1973, which it then applies to forecast fuel consumption. The carrier computes the increased cost to approximate $2,275,000 annually, which it claims necessitates a 6.5 percent fare increase. The carrier alleges that after taking into consideration the requested fare increase its return on investment will be 3.4 percent for the year ended February 28, 1975.

Upon consideration of the tariff filing, the justification, and all relevant matters, the Board finds that the proposed increased fares may be unjust, unreasonable, unjustly discriminatory, unduly preferential, unduly prejudicial, or otherwise unlawful and should be investigated. The Board has also concluded to suspend the fares pending investigation.

Alaska has been permitted to implement two significant increases in less than a year, and were we to permit the further increase here requested the result would be an aggregate fare increase of 17 to 18 percent over the level in effect on May 31, 1973 in most of the markets served by this carrier. We are not unmindful of recent fuel cost increases incurred by Alaska, as well as the industry generally, and are not prepared to say that some revenue relief is not justified. However, we are not persuaded from the data submitted by the carrier that an increase in the magnitude of 6.5 percent is warranted at this time. The Board has an obligation to consider the impact of recent Alaskan fare increases both on those traveling between Alaska and the lower 48 states and those traveling within Alaska where, in most areas, air travel is the only viable means of transportation.

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 fares and provisions described in Appendix A filed as part of the original document, and rules, regulations, and practices affecting such fares and provisions, are or will be unjust, unreasonable, unjustly discriminatory, unduly preferential, unduly prejudicial, or otherwise unlawful, and if found to be unlawful, to determine and prescribe the lawful fares and provisions, and rules, regulations, or practices affecting such fares and provisions;

2. Pending hearing and decision by the Board, the fares and provisions described in Appendix A are suspended and their use deferred to and including May 29, 1974, unless otherwise ordered by the Board, and that no changes be made therein during the period of suspension except by order or special permission of the Board;

3. The investigation ordered herein be assigned for hearing before an Administrative Law Judge of the Board at a time and place hereafter to be desiginated; and

4. A copy of this order be filed in the aforesaid tariff and be served upon Alaska Airlines, Inc. which is hereby made party to this proceeding.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board:

[SEAL] PHYLLIS T. KAYLOR,
Acting Secretary.

[FR Doc.74-4912 Filed 3-1-74;8:45 am]

[1] Revisions to Airline Tariff Publishers, Inc., Agent, Tariff C.A.B. No. 202.

[Docket 26457; Order 74-2-105]

EASTERN AIR LINES, INC. AND FRONTIER AIRLINES, INC.

Order of Investigation and Suspension

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 26th day of February, 1974.

By tariff revisions[1] marked to become effective March 1, 1974, Eastern Air Lines, Inc. (Eastern) and Frontier Airlines, Inc. (Frontier) propose increases in the level of their domestic passenger fares of six percent and 1.8 percent, respectively.[2]

Information on the current cost of fuel which has a direct bearing upon the reasonableness of the proposals here before the Board, has become available only within the past week.[3] Accordingly, the Board has until now been unable to make an accurate and current assessment of the situation confronting the industry. For this reason, and in view of the imminent effective date here involved, we will herein suspend the tariff proposals to afford an adequate period of time for evaluation in conjunction with current fuel price data. It is the Board's intention to reach a decision on these proposals at the earliest feasible date.

Upon consideration of all relevant matters, the Board has determined that the proposals may be unjust or unreasonable, or unjustly discriminatory, or unduly preferential, or unduly prejudicial, or otherwise unlawful, and should be investigated. The Board further concludes that these proposals should be suspended pending investigation.

Accordingly, pursuant to the Federal Aviation Act of 1958, and particularly sections 204, 403, 404, and 1002 thereof,

It is ordered that:

1. An investigation be instituted to determine whether the fares and provisions described in Appendix A filed as part of the original document, including subsequent revisions and reissues thereof, and rules, regulations, and practices affecting such fares and provisions, are or will be unjust, unreasonable, unjustly discriminatory, unduly preferential, unduly prejudicial, or otherwise unlawful, and if found to be unlawful, to determine and prescribe the lawful fares and provisions, and rules, regulations, or practices affecting such fares and provisions;

2. Pending hearing and decision by the Board, the fares and provisions described in Appendix A are suspended and their use deferred to and including May 29, 1974, unless otherwise ordered by the Board, and that no changes be made therein during the period of suspension except by order or special permission of the Board; and

[1] Revisions to Airline Tariff Publishers, Inc. (Agent), Tariff C.A.B. Nos. 142, 202, 209.

[2] Eastern proposes to increase its published fares whereas Frontier proposes a surcharge published by rule.

[3] For the month of January 1974; released by the Board on February 20, 1974 (Press Release 74-33).

3. A copy of this order will be filed with the aforesaid tariffs and be served upon Eastern Air Lines, Inc., Frontier Airlines, Inc., and the complainants in Dockets 26365, 26367, 26392, and 26405, which are hereby made parties to this proceeding.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board:

[SEAL] PHYLLIS T. KAYLOR,
Acting Secretary.

[FR Doc.74-4911 Filed 3-1-74;8:45 am]

[Docket 26350]

SITMAR CRUISES, INC.

Notice of Postponement of Prehearing Conference

Notice is hereby given that the prehearing conference in the above-entitled matter has been postponed from March 5, 1974 (49 FR 4940, February 8, 1974), to March 14, 1974, at 10:00 a.m. (local time) in Room 503, Universal Building, 1825 Connecticut Avenue NW., Washington, D.C., before the undersigned Administrative Law Judge.

Dated at Washington, D.C., February 26, 1974.

[SEAL] MILTON H. SHAPIRO,
Administrative Law Judge.

[FR Doc.74-4913 Filed 3-1-74;8:45 am]

ATOMIC ENERGY COMMISSION

[Docket No. 50-323, NEPA]

PACIFIC GAS AND ELECTRIC CO.

Hearing on Energy Conservation

In the matter of Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Unit No. 2).

On February 26, 1974, the Board issued its ruling on Scenic Shoreline's amended contentions, dated January 18, 1974, relating to energy conservation. The document also stated the following concerning the evidentiary hearing on this matter:

The evidentiary hearing on energy conservation will begin at 10 a.m. (local time) on March 27, 1974, in the Gold Room, The Royal Inn, 214 Madonna Road, San Luis Obispo, California.

The public is invited to attend this proceeding. Limited appearances relating to the question of energy conservation will be accepted at that time. Limited appearances will be limited to five (5) minutes but there is no limitation on the submittal of written statements for inclusion in the record. Twenty (20) copies of written statements should be presented.

Issued at Washington, D.C., this 27th day of February 1974.

It is so ordered.

ATOMIC SAFETY AND LICENSING BOARD,
ELIZABETH S. BOWERS,
Chairman.

[FR Doc.74-4905 Filed 3-1-74;8:45 am]

CIVIL SERVICE COMMISSION

FARM CREDIT ADMINISTRATION

Grant of Authority To Make Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission authorizes the Farm Credit Administration to fill by noncareer executive assignment in the excepted service the position of Assistant Director-Field Service, Credit Service.

UNITED STATES CIVIL SERVICE COMMISSION,

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

[FR Doc.74-4907 Filed 3-1-74;8:45 am]

ENVIRONMENTAL PROTECTION AGENCY

[OPP-36002-4-5]

REGISTRATION OF PESTICIDES

Notice of Denial of Registration

Correction

In FR Doc. 74-3917, appearing on page 6144 of the issue for Tuesday, February 19, 1974, in the third line of the paragraph beginning "Coastal Ag-Chem Co.", the Application Number, reading "9469-A", should read "8469-A".

[OPP-32000/18]

NOTICE OF RECEIPT OF APPLICATIONS FOR PESTICIDE REGISTRATION; DATA TO BE CONSIDERED IN SUPPORT OF APPLICATIONS

On November 19, 1973, the Environmental Protection Agency published in the FEDERAL REGISTER (38 FR 31862) its interim policy with respect to the administration of section 3(c)(1)(D) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (86 Stat. 979), and its procedures for implementation. This policy provides that EPA will, upon receipt of every application, publish in the FEDERAL REGISTER a notice containing the information shown below. The labeling furnished by the applicant will be available for examination at the Environmental Protection Agency, Room EB-37, East Tower, 401 M Street SW., Washington, D.C. 20460.

On or before May 3, 1974, any person who (a) is or has been an applicant, (b) desires to assert a claim for compensation under section 3(c)(1)(D) against another applicant proposing to use supportive data previously submitted and approved, and (c) wishes to preserve his opportunity for determination of reasonable compensation by the Administrator must notify the Administrator and the applicant named in the FEDERAL REGISTER of his claim by certified mail. Every such claimant must include, at a minimum, the information listed in this interim policy published on November 19, 1973.

Applications submitted under 2(a) or 2(b) of the interim policy in regard to usage of existing supportive data for registration will be processed in accordance with existing procedures. Applications submitted under 2(c) will be held for the 60-day period before commencing processing. If claims are not received, the application will be processed in normal procedure. However, if claims are received within 60 days, the applicants against whom the particular claims are asserted will be advised of the alternatives available under the Act. No claims will be accepted for possible EPA adjudication which are received after May 3, 1974.

APPLICATIONS RECEIVED

EPA File Symbol 4206-EO. The Barcolene Company, 620 South Street, Holbrook, Massachusetts 02343. *Barcolene Pool Powder Plus.* Active Ingredients: Sodium dichloro-s-triazinetrione dihydrate 100%. Method of Support: Appplication proceeds under 2(b) of interim policy.

EPA File Symbol 5185-EEA. Bio-Lab, Inc., P.O. Box 1489, Decatur, Georgia 30031. *Bio-Guard P-56 Super Soluble Organic Chlorine Concentrate.* Active Ingredients: Sodium dichloro-s-triazinetrione dihydrate 100%. Method of Support: Application proceeds under 2(b) of interim policy.

EPA File Symbol 5185-EET. Bio-Lab, Inc., P.O. Box 1489, Decatur, Georgia 30031. *Bio-Guard °FRC-56 Super Soluble Granular Chlorine.* Active Ingredients: Sodium dichloro-s-triazinetrione dihydrate 100%. Method of Support: Application proceeds under 2(b) of interim policy.

EPA File Symbol 9613-A. Bison Laboratories, Inc., 80 Leslie Street, Buffalo, New York 14211. *Bison Pool Brite.* Active Ingredients: Sodium dichloro-s-triazinetrione dihydrate 100%. Method of Support: Application proceeds under 2 (b) of interim policy.

EPA File Symbol 9444-GE. Cline-Buckner, Inc., 16317 Piuma Avenue, Cerritos, California 90701. *Purge Total Release Insecticide with Vapona.* Active Ingredients: 2,2-dichlorovinyl dimethyl phosphate 6.50%; related compounds 0.50%; Epichlorohydrin 0.25% petroleum distillates 7.00%. Method of Support: Application proceeds under 2(c) of interim policy.

EPA File Symbol 270-OT. Farnam Companies, Inc., 9990 "F" Street, P.O. Box 12068, Omaha, Nebraska 68112. *Farnam Fly Lure.* Active Ingredients: 2,2-dichlorovinyl dimethyl phosphate 0.47%; Related compounds 0.03%; Putrescent Whole Egg Solids 25.0%. Method of Support: Application proceeds under 2(c) of interim policy.

EPA File Symbol 2596-UI. The Hartz Mountain Corporation, 700 S. 4th Street, Harrison, New Jersey 07029. *Hartz Mountain 120 Dog Defender.* Active Ingredients: 2,2-dichlorovinyl dimethyl phosphate 18.6%; Related Compounds 1.4%. Method of Support: Application proceeds under 2(c) of interim policy.

EPA File Symbol 10897-T. Hasa Chemicals, Inc., 23119 Drayton Street, Saugus, California 91350. *Hydro-gard.* Active Ingredients: Sodium dichloro-s-triazinetrione dihydrate 100%. Method of Support: Application proceeds under 2(b) of interim policy.

EPA File Symbol 10183-EN. Haviland Products Company, 421 Ann St., N.W., Grand Rapids, Michigan 49504. *Chlor Con 56 Concentrated Pool Chlorine.* Active Ingredients: Sodium dichloro-s-triazinetrione dihydrate 100%. Method of Support: Application proceeds under 2(b) of interim policy.

EPA File Symbol 10183-RO. Haviland Products Company, 421 Ann St., N.W., Grand Rapids, Michigan 49504. *Durachlor 56 Concentrated Pool Chlorine.* Active Ingredients:

Sodium dichloro-s-trianzinetrione dihydrate 100%. Method of Support: Application proceeds under 2(b) of interim policy.

EPA Reg. No. 5905-2. Helena Chemical Company, Clark Tower—5100 Poplar Ave., Suite 2900, Memphis, Tennessee 38137. *Helena Brand 5% Cythion Dust.* Active Ingredients: Malathion 5%. Method of Support: Application proceeds under 2(c) of interim policy.

EPA Reg. No. 5905-212. Helena Chemical Company, Clark Tower—5100 Poplar Ave., Suite 2900, Memphis, Tennessee 38137. *Helena Animal Health Cygon 2-E.* Active Ingredients: Dimethoate (O,O-dimethyl S-[N-methylcarbamoylmethyl]phosphorodithioate) 24.2%. Method of Support: Application proceeds under 2(c) of interim policy.

EPA Reg. No. 5905-228. Helena Chemical Company, Clark Tower—5100 Poplar Ave., Suite 2900, Memphis, Tennessee 38137. *Helena Brand Phosdrin 4-E.* Active Ingredients: Alpha Isomer of 2-Carbomethoxy-1-Methylvinyl Dimethyl Phosphate 28.3%; Related Compounds 18.8%; Xylene Range Aromatic Hydrocarbon Solvent 47.9%. Method of Support: Application proceeds under 2(c) of interim policy.

EPA File Symbol 5197-LG. Kem Manufacturing Corporation, 2075 Tucker Industrial Road, Tucker, Georgia 30084. *Chek Lemon-Lime.* Active Ingredients: Propylene Glycol 10.0%; Triethylene Glycol 5.0%; n-Alkyl (40% C12, 50% C14, 10% C16) Dimethyl Benzyl Ammonium Chlorides 0.5%. Method of Support: Application proceeds under 2(c) of interim policy.

EPA File Symbol 8791-RE. King-Kratz Corp., 4 Cermak Blvd., St. Peters, Missouri 63376. *Lo-Flame Concentrated Pool Chlorine.* Active Ingredients: Sodium dichloro-s-triazinetrione dihydrate 100%. Method of Support: Application proceeds under 2(b) of interim policy.

EPA File Symbol 278-LN. Miami Products & Chemicals Co., 520 Lonoke Street, Dayton, Ohio 45401. *Sanygen Concentrated Pool Chlorine.* Active Ingredients: Sodium dichloro-s-triazinetrione dihydrate 100%. Method of Support: Application proceeds under 2(b) of interim policy.

EPA File Symbol 8934-IL. Ring Around Products, Inc., P.O. Box 589, Montgomery, Alabama 36101. *Ring Around Brand DSMA Liquid.* Active Ingredients: Disodium Methanearsonate 21.76%. Method of Support: Application proceeds under 2(c) of interim policy.

EPA Reg. No. 476-1917. Stauffer Chemical Company, 1200 South 47th Street, Richmond, California 94804. *Imidan 50-WP.* Active Ingredients: N-(mercaptomethyl) phthalimide S-(O,O-dimethyl phosphorodithioate 50%. Method of Support: Application proceeds under 2(b) of interim policy.

EPA File Symbol 9157-EU. Sun Pool Chemicals, Div. of Sun Cleanser Co., 35750 Industrial Road, Livonia, Michigan 48150. *Solarclor Pool Chlorine.* Active Ingredients: Sodium dichloro-s-triazinetrione 60%; Sodium Carbonate 40%. Method of Support: Application proceeds under 2(c) of interim policy.

EPA File Symbol 33722-E. Tex-Ag Company, Inc., P.O. Box 638, Mission, Texas 78572. *Fire Cracker Soil Insect Killer.* Active Ingredients: Heptachlor 10.00%; Related Compounds 3.89%. Method of Support: Application proceeds under 2(c) of interim policy.

EPA File Symbol 148-RRAT. Thompson-Hayward Chemical Company, 5200 Speaker Road, Kansas City, Kansas 66110. *Pure Pool Dry Chlorine Concentrate FR.* Active Ingredients: Sodium dichloro-s-triazinetrione dihydrate 100%. Method of Support: Application proceeds under 2(b) of interim policy.

EPA File Symbol 3525-LT. Utility Chemical Co., 145 E. Peel St., Paterson, New Jersey 07524. *Utikem Super Concentrate Pool Chlorine.* Active Ingredients: Sodium dichloro-s-triazinetrione dihydrate 100%. Method of Support: Application proceeds under 2(b) of interim policy.

EPA File Symbol 550-OA. Van Waters & Rogers, P.O. Box 3200, San Francisco, California 94119. *Vancare Drychlor Concentrated Pool Chlorine.* Active Ingredients: Sodium dichloro-s-triazinetrione dihydrate 100%. Method of Support: Application proceeds under 2(b) of interim policy.

Dated: February 26, 1974.

JOHN B. RITCH, Jr.,
Director,
Registration Division.

[FR Doc.74-4934 Filed 3-1-74;8:45 am]

[OPP-180004]

ST. JOHNS RIVER, FLA.

Receipt of Application From Department of the Army for Specific Pesticide Exemption and Solicitation of Public Views

On December 28, 1973, an application for a specific exemption from the requirements of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (86 Stat. 973), was received by the Environmental Protection Agency (EPA) from the Department of the Army, Office of the Chief of Engineers, Director of Civil Works, Washington, D.C. 20314, pursuant to § 166.2(a) of the regulations (40 CFR Part 166) governing exemption of Federal and State Agencies for use of pesticides under emergency conditions. The regulations were published in the FEDERAL REGISTER on December 3, 1973 (38 FR 33303).

The U.S. Corps of Engineers, Department of the Army (hereafter referred to as the "Applicant"), has requested the use of the chemical 2,4-D (dimethylamine salt of 2,4 dichlorophenoxy acetic acid) for control and progressive eradication of waterhyacinths from the navigable waters, tributary streams, connecting channels and other allied waters of the St. Johns River, Florida. All interested persons are referred to the application on file with the Registration Division (HM-567), Office of Pesticide Programs, Room 347, East Tower, Environmental Protection Agency, Washington, D.C. 20460, for a statement of the representations contained therein which are summarized below.

(1) *Nature, scope and frequency of the emergency.* On December 4, 1973, the Deputy Assistant Administrator for Pesticide Programs, EPA, sent a letter directing the Corps of Engineers to stop using products containing the chemical 2,4-D in the St. Johns Rivers, since that chemical is not registered for use in flowing/moving waters. The Applicant states that the rapid and extensive growth of waterhyacinths in this river is a hazard to navigation and recreation activities. According to the Applicant, there is no known method of control as effective as this chemical.

(2) *Description of the pest (Waterhyacinth).* The Applicant states that the plants are floating and oftentime rooted in mud, with slender, perennial rootstocks and rosettes of stalked-inflated leaves and fibrous, branching dark roots. Petioles oftentime are inflated or bladderlike. The plants reproduce largely by vegetative means and are connected by stolons. The waterhyacinth shows considerable variation in size, the plants ranging from a few centimeters to nearly a meter in height. Plants infrequently set seed within a large population. The seeds may sink to the bottom and then remain dormant until periods of water stress, i.e., droughts. Upon reflooding, the seeds may germinate and renew the populations in spite of the conspicuous absence of vegetative material.

(3) *Pesticide registration.* The Applicant states that the use of the chemical 2,4-D would permit them to conduct a program of Aquatic Plant Control by the use of 2,4-D in moving water. However, the chemical 2,4-D is registered for control of aquatic weeds in still water, e.g., lakes, ponds, etc., and a very limited use in the Northwest in irrigation ditches with an established residue tolerance in water of 0.1 part per million (ppm).

(4) *Pesticides to be used.* The Applicant states that the chemical 2,4-D has been found to be a very effective and feasible measure of control. He also states that other herbicides such as sodium arsenite or amitrole are effective but are undesirable from an environmental point of view. It should be noted that sodium arsenite and amitrole are not registered for such use; consequently, before the Corps of Engineers could use these pesticides, it would be required to either apply for registration or request an exemption under section 18 of the FIFRA, as amended (40 CFR Part 166).

(5) *Applicant's description of the eradication or control program.* i. The chemical 2,4-D would be applied at a rate of two to four pounds per acre for control of waterhyacinths, applied directly to the floating mat. One application is normally sufficient to kill the plant. Follow-up applications as a spot treatment are normally necessary in a control program. For treatment of approximately 3,000 acres of waterhyacinths, approximately 12,000 pounds acid equivalent would be required.

ii. The chemical would be applied on floating mats of waterhyacinths in the St. Johns River. The program in this request for specific exemption covers only the area of the St. Johns River from Lake Harney to approximately Jacksonville.

iii. Chemical application would be made from air boats as a direct spray at 75-100 pounds pressure in 100-200 gallons of water per acre.

iv. Treatment would involve the spring-summer season, April through September.

v. The chemical would be applied by trained personnel of the Corps of Engineers or by contracts under the direct supervision of the Corps of Engineers. Engineer Regulation ER 1105-2-13, Planning, and Engineer Regulation ER 1130-2-232, Operations, and a manual for the personnel training program are

available from the Corps of Engineers upon request.

(6) *Statement of economic benefits and losses anticipated with and without the exemption.* The Applicant states that annual benefits in the interest of commercial navigation and recreation are estimated at $1,092,750.00 with a benefit-cost ratio of 3.0 to one.

(7) *Analysis of possible adverse effects on man and the environment.* The Final Environmental Impact Statement for the Hyacinth Control Program in Florida which includes the St. Johns River was filed with the Council for Environmental Quality on September 11, 1973.

This notice does not indicate a decision by this Agency on the application. It has been determined that this application raises questions of such importance that public notice and opportunity for comment should be given. Questions which EPA must address before making a decision on such an application include the following: Are the applicant's representations supported by the available facts? Are there alternatives which are sufficiently effective to control the waterhyacinth? If so, what are the economic, social, and environmental costs and benefits of such alternatives? How do they compare to the economic, social, and environmental costs and benefits of the applicant's proposed control program? Accordingly, interested persons are invited to submit written data or views on these questions or any other matter pertinent to the application to the FEDERAL REGISTER Section, Technical Services Division (HM-569), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460. These comments must be received on or before March 25, 1974, and should bear the notation OPP-180004.

Dated: February 26, 1974.

CHARLES L. ELKINS,
Acting Assistant Administrator for Hazardous Materials Control.

[FR Doc.74-4932 Filed 3-1-74;8:45 am]

FEDERAL MARITIME COMMISSION

BOARD OF COMMISSIONERS OF THE PORT OF NEW ORLEANS AND CONTINENTAL GRAIN CO.

Notice of Agreements Filed

Notice is hereby given that the following agreements have been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreements at the Washington office of the Federal Maritime Commission, 1100 L Street NW., Room 10126; or may inspect the agreements at the Field Offices located at New York, N.Y., New Orleans, Louisiana, San Francisco, California, and Puerto Rico. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, on or before March 14, 1974. Any person desiring a hearing on the proposed agreements shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the agreements (as indicated hereinafter) and the statement should indicate that this has been done.

Notice of agreements filed by:

Cyrus C. Guidry, Port Counsel, Board of Commissioners of the Port of New Orleans, P.O. Box 60046, New Orleans, Louisiana 70160.

Agreement No. T-15-1, between the Board of Commissioners of the Port of New Orleans (Port) and Continental Grain Company (Continental), modifies the basic agreement which provides for Continental's construction and operation of a grain elevator at Westwego, Louisiana. The purpose of the modification is to provide for the construction, ownership, and operation of a bulk grain barge unloading facility in connection with the grain elevator at Westwego, Louisiana, Continental will be subject to all Port rules and regulations and will publish a tariff for the facilities, containing the same charges as those published in the Port's Dock Department Tariff.

Agreement No. T-15-2 modifies the basic agreement by (1) providing that Continental's construction of the bulk grain barge unloading facility will be in lieu of its replacing certain damaged barge slip facilities, as provided for in the basic agreement, (2) providing for a sharing of the dockage charges collected at the new facility, with the Port remitting 50 percent of all such charges to Continental, and (3) providing for Continental's reimbursement to Port for the damaged barge slip facilities; said reimbursement to be deducted from Continental's share of the dockage charges assessed and collected at the new facilities.

Agreement No. T-15-3 modifies the basic agreement by providing for the addition of certain improvements to the Port's public dock adjacent to Continental's grain elevator facility at Westwego, Louisiana. The design, construction, and cost of the improvements will be undertaken by Continental for Port upon Port's approval. All specified costs up to $1,500,000 shall be subject to reimbursement by Port the year following substantial completion of the facility, at which time title to the improved facility shall vest in the Port. Port will reimburse the cost out of revenue, in excess of $100,000 per annum, collected pursuant to its published tariff. The first call on berth privilege, as provided in the basic agreement shall also apply to the improved facilities.

Dated: February 26, 1974.

By order of the Federal Maritime Commission.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.74-4926 Filed 3-1-74;8:45 am]

FAR EAST CONFERENCE AND PACIFIC WESTBOUND 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, 1100 L Street NW., Room 10126; or may inspect the agreement at the field Offices located at New York, N.Y., New Orleans, Louisiana, San Francisco, California, and San Juan, Puerto Rico. Comments on such agreements, including requests for hearing,

may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, on or before March 25, 1974. Any person desiring a hearing on the proposed agreement shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the Commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constiture 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:

Elkan Turk, Jr., Esq., Burlingham, Underwood & Lord, 25 Broadway, New York, New York 10004.

Agreement No. 8200–3 is an application on behalf of the Far East Conference and the Pacific Westbound Conference and their member lines for consideration under Section 15 of the Shipping Act, 1916, providing for the continued approval of Agreement No. 8200, as amended, the joint agreement between said conferences, without any limitation as to term. The duration of Agreement No. 8200, as amended by Agreements Nos. 8200–1 and 8200–2, was extended by the Commission until April 16, 1971, by its order of January 30, 1970, and was further extended until June 15, 1974, by order of June 15, 1971.

Dated: February 27, 1974.

By order of the Federal Maritime Commission.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.74–4931 Filed 3–1–74;8:45 am]

U.S. ATLANTIC AND GULF/ARABIAN-PERSIAN GULF TRADE

Notice of Agreement Filed

Notice is hereby given that the following agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1100 L Street NW., Room 10126; or may inspect the agreement at the Field Offices located at New York, N.Y., New Orleans, Louisiana, San Francisco, California and Puerto Rico. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, on or before March 25, 1974. Any person desiring a hearing on the proposed agreement shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter) and the statement should indicate that this has been done.

Notice of agreement filed by:

Stanley O. Sher, Esq., Billig, Sher & Jones, P.C., Suite 300, 1126 16th Street NW., Washington, D.C. 20036.

Agreement No. 8900–7 would permit the parties to Agreement No. 8900 to "agree on the number, spacing and port calls of their sailings" and to charter vessels among themselves; space charter among themselves; space charter to entities not party to Agreement No. 8900, and jointly charter from entities party or not party to the basic agreement.

Dated: February 26, 1974.

By order of the Federal Maritime Commission.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.74–4930 Filed 3–1–74;8:45 am]

FEDERAL RESERVE SYSTEM

FIRST NATIONAL BANCORPORATION, INC.

Order Approving Acquisition of Bank

The First National Bancorporation, Inc., Denver, Colorado, a bank holding company within the meaning of the Bank Holding Company Act, has applied for the Board's approval, under section 3 (a)(3) of the Act (12 U.S.C. 1842(a)(3)) to acquire 80 per cent or more of the voting shares of United States Bank of Grand Junction, Grand Junction, Colorado ("Bank").

Notice of the application, affording opportunity for interested persons to submit comments and views, has been given in accordance with section 3(b) of the Act. The time for filing comments and views has expired, and the Board has considered the application and all comments received in light of the factors set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Applicant controls ten banks with aggregate deposits of $914.1 million representing about 15 per cent of deposits in commercial banks in Colorado and ranks as the largest banking organization in the State.[1] Acquisition of Bank (deposits of $37.8 million) would add only about one-half of 1 per cent of deposits in commercial banks in Colorado to Applicant's control and would not result in a significant increase in the concentration of banking resources in the State.

Bank is located in Mesa County in the Western Slope region of Colorado and is the second largest bank in the market with control of approximately 36 percent of the total commercial deposits in this area.[2] Bank presently competes with the State's second and fourth largest bank holding companies, each of which controls a bank in Grand Junction. Applicant's closest banking subsidiary to Bank is approximately 125 miles distant; there is no significant actual competition between any of Applicant's banking subsidiaries and Bank. Nor, due to the distances involved and Colorado's branching law among other factors, is there a reasonable probability of substantial future competition developing between Bank and any of Applicant's banking subsidiaries. Applicant is not likely to enter Mesa County on a de novo basis since, as the Board noted in its recent Order approving the acquisitions of the largest and smallest banks in Mesa County by D. H. Baldwin, the market is not attractive for such entry (See 1973 Federal Reserve *Bulletin*, 752). Finally, there are no other banks in Grand Junction, the commercial center of Mesa County, which Applicant could acquire as an alternative means of entry to that of Bank. The Board concludes that competitive considerations are consistent with approval of the application.

The financial and managerial resources and future prospects of Applicant, its subsidiary banks, and Bank are regarded as generally satisfactory, particularly in view of Applicant's commitment to add capital to its lead bank. Applicant's acquisition of Bank will provide for management succession, and this factor lends support for approval of the application. Considerations relating to the convenience and needs of the community to be served also lend support for approval of the application. Applicant has stated it will assist Bank in building a new bank office building, which is required in view of the age of Bank's present office building. Moreover, Applicant has indicated it will assist Bank in meeting its present loan demand. The Board concludes that consummation of the transaction would be in the public interest.

On the basis of the record, the application is approved for the reasons summarized above. The transaction shall not be consummated (a) before the thirtieth calendar day following the effective date of this Order or (b) later than three months after the effective date of this Order unless such period is extended for good cause by the Board or by the Federal Reserve Bank of Kansas City pursuant to delegated authority.

[1] All banking data are as of June 30, 1973, adjusted to reflect bank holding company formations and acquisitions approved by the Board through December 31, 1973.

[2] The relevant banking market is approximated by Mesa County.

By order of the Board of Govenors,[3] effective February 20, 1974.

[SEAL] CHESTER B. FELDBERG,
Secretary of the Board.

[FR Doc.74-4887 Filed 3-1-74;8:45 am]

GENERAL SERVICES ADMINISTRATION

[Federal Property Management Regulations Temporary Regulations F-211]

SECRETARY OF DEFENSE

Delegation of Authority

1. *Purpose.* This regulation delegates authority to the Secretary of Defense to represent the consumer interests of the executive agencies of the Federal Government in an electric rate proceeding.

2. *Effective date.* This regulation is effective immediately.

3. *Delegation.* a. Pursuant to the authority vested in me by the Federal Property and Administrative Services Act of 1949, 63 Stat. 377, as amended, particularly sections 201(a)(4) and 205(d) (40 U.S.C. 481(a)(4) and 486(d)), authority is delegated to the Secretary of Defense to represent the consumer interests of the executive agencies of the Federal Government before the South Carolina Public Service Commission in a proceeding (Docket No. 17,134) involving the application of the Carolina Power and Light Company for electric rate increases.

b. The Secretary of Defense may redelegate this authority to any officer, official, or employee of the Department of Defense.

c. This authority shall be exercised in accordance with the policies, procedures, and controls prescribed by the General Services Administration, and, further, shall be exercised in cooperation with the responsible officers, officials, and employees thereof.

DWIGHT A. INK,
Acting Administrator of General Services.

FEBRUARY 21, 1974.

[FR Doc.74-4890 Filed 3-1-74;8:45 am]

INTERIM COMPLIANCE PANEL (COAL MINE HEALTH AND SAFETY)

H-L COAL CO. AND R. & R. COAL CO.

Applications for Initial Permits Electric Face Equipment Standard; Notice of Opportunity for Public Hearing

Applications for Initial Permits for Noncompliance with the Electric Face Equipment Standard have been received for items of equipment in the underground coal mines listed below.

(1) ICP Docket No. 4076-000, H-L COAL COMPANY, Mine No. 1, Mine ID No. 44 01776 0, Hurley, Virginia.

[3] Voting for this action: Chairman Burns and Governors Mitchell, Daane, Brimmer, Sheehan, Bucher, and Holland.

(2) ICP Docket No. 4251-000, R. & R. COAL COMPANY, Perkins Mine, Mine ID No. 33 02309 0, Jackson, Ohio.

In accordance with the provisions of section 305(a)(2) (30 U.S.C. 865(a)(2)) of the Federal Coal Mine Health and Safety Act of 1969 (83 Stat. 742, et seq., Public Law 91-173), notice is hereby given that requests for public hearing as to an application for an initial permit may be filed within 15 days after publication of this notice. Requests for public hearing must be filed in accordance with 30 CFR Part 505 (35 Fed. Reg. 11296, July 15, 1970), as amended, copies of which may be obtained from the Panel upon request.

A copy of each application is available for inspection and requests for public hearing may be filed in the office of the Correspondence Control Officer, Interim Compliance Panel, Room 800, 1730 K Street, NW., Washington, D.C. 20006.

GEORGE A. HORNBECK,
Chairman, Interim Compliance Panel.

FEBRUARY 25, 1974.

[FR Doc.74-4881 Filed 3-1-74;8:45 am]

NATIONAL TRANSPORTATION SAFETY BOARD

[Docket No. SA-444]

PAN AMERICAN WORLD AIRWAYS, INC.

Notice of Hearing

In the matter of investigation of accident involving Pan American World Airways, Inc., Boeing 707-321B of United States Registry N454PA, Pago Pago, American Samoa, January 30, 1974.

Notice is hereby given that an Accident Investigation Hearing on the above matter will be held commencing at 9:30 a.m. (local time) on March 19, 1974, at the Princess Room, Princess Kaiulani Hotel, 120 Kaiulani Avenue, Honolulu, Hawaii.

Dated this 28th day of February 1974.

RICHARD G. RODRIGUEZ,
Senior Hearing Officer.

[FR Doc.74-4995 Filed 2-28-74;1:59 pm]

OFFICE OF MANAGEMENT AND BUDGET

CLEARANCE OF REPORTS

Listing of Requests

The following is a list of requests for clearance of reports intended for use in collecting information from the public received by the Office of Management and Budget on February 27, 1974 (44 U.S.C. 3509). The purpose of publishing this list in the FEDERAL REGISTER is to inform the public.

The list includes the title of each request received; the name of the agency sponsoring the proposed collection of information; the agency form number, if applicable; the frequency with which the information is proposed to be collected; the name of the reviewer or reviewing division within OMB, and an indication of who will be the respondents to the proposed collection.

The symbol (x) identifies proposals which appear to raise no significant issues, and are to be approved after brief notice through this release.

Further information about the items on this Daily List may be obtained from the Clearance Office, Office of Management and Budget, Washington, D.C. 20503 (202-395-4529).

NEW FORMS

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education, Assessment of Vocational Education Programs for Handicapped through 6, *Single time*, HRD/Planchon, 100 (Project Review Forms), Forms OE 348, 1 vocational education projects in 25 States.

Health Resources Administration, Notification of Action under Section 1122 of the Social Security Act, Form HRABHRD 0221, *Occasional*, Caywood, One DPA in each participating State or territory.

Survey of Users and Uses of Marriage and Divorce Statistics, 1972, Form HRANCHS11, *Single time*, Tunstall, Research agencies.

Audiovisual Materials in Dental Auxiliary Education-A, Catalog, Form HRABHRD 1116, *Single time*. Planchon, Educational institutions.

Health Services Administration, Putnam Flagler Study of Migrant Worker Health Status, Form HSABCHS 1217, *Single time*, Reese/Wann, Migrant farm workers based in Putnam, Flagler and St. Johns Counties, Fla.

REVISIONS

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Patent Waiver Report, Form NASA 1393, Annual, Caywood, Business firms.

EXTENSIONS

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Center for Disease Control, Quarterly Report of Rat Control Project Activities, Form CDC 7.15, *Quarterly* Evinger (x).

PHILLIP D. LARSEN,
Budget and Management Officer.

[FR Doc.74-4992 Filed 3-1-74;8:45 am]

SMALL BUSINESS ADMINISTRATION

[License No. 01/01-5273]

MASSACHUSETTS VENTURE CAPITAL CORP.

Issuance of License To Operate as a Small Business Investment Company

On September 6, 1973, a notice was published in the FEDERAL REGISTER (38 FR 24281) stating that Massachusetts Venture Capital Corporation, located at 185 Devonshire Street, Boston, Massachusetts 02110, had filed an application with the Small Business Administration, pursuant to § 107.102 (38 FR 30836 November 7, 1973) 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 (the Act), as amended.

The period for comment ended September 21, 1973.

Notice is hereby given that, having considered the application and other pertinent information, SBA has issued License No. 01/01-5273 to Massachusetts Venture Capital Corporation, pursuant to said section 301(d) of the Act.

Dated: February 22, 1974.

JAMES THOMAS PHELAN,
Deputy Associate Administrator for Investment.

[FR Doc.74-4892 Filed 3-1-74;8:45 am]

INTERSTATE COMMERCE COMMISSION

[No. AB-1 (Sub-Nos. 15 and 17)]

CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY

Abandonment of Lines

Upon consideration of the record in the above-entitled proceedings and of a staff-prepared environmental threshold assessment survey which is available for public inspection upon request; and

It appearing, That no environmental impact statement need be issued in these proceedings, because these proceedings do not represent a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, 42 U.S.C. secs. 4321, et seq.; and good cause appearing therefore:

It is ordered, That applicant be, and is hereby, directed to publish the appended notice in a newspaper of general circulation in Rock and Jefferson Counties, Wis., within 15 days of the date of service of this order, and certify to this Commission that this has been accomplished.

And it is further ordered, That notice of this order shall be given to the general public by depositing a copy thereof in the Office of the Secretary of the Commission at Washington, D.C., and by forwarding a copy to the Director, Office of the Federal Register, for publication in the FEDERAL REGISTER.

Dated at Washington, D.C., this 21st day of February, 1974.

By the Commission, Commissioner Deason.

[SEAL] ROBERT L. OSWALD,
Secretary.

[No. AB-1 (Sub-No. 17)]

CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY ABANDONMENT BETWEEN BELOIT AND EVANSVILLE, WIS., AND BETWEEN AFTON AND JANESVILLE, WIS.

[No. AB-1 (Sub-No. 15)]

CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY ABANDONMENT BETWEEN JANESVILLE AND FORT ATKINSON, WIS.

The Interstate Commerce Commission hereby gives notice that by order dated February 21, 1974, it has been determined that the proposed abandonments of the lines of the Chicago and North Western Transportation Company between Beloit and Evansville, Wis. (23 miles), Afton and Janesville, Wis. (5 miles), and Janesville and Fort Atkinson, Wis. (15.1 miles), if approved by the Commission, would not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. §§ 4321, et seq., and that preparation of a detailed environmental impact statement will not be required under section 4332 (2)(C) of the NEPA.

It was concluded, among other things, that alternate rail service is available from the Chicago, Milwaukee, St. Paul and Pacific Railroad, which has expressed a willingness to serve Footville, the only affected point not presently served by this alternate line. In addition, the abandonment would be consistent with local land use plans in Wisconsin. Applicant has expressed a willingness to accept conditions upon any grant of authority in order to mitigate any adverse effects which might occur. The right-of-way of the rail line, if the abandonment is approved, is ideally suited for such recreational uses as a public bike and hiking trail. The determination was based upon the staff preparation and consideration of an environmental threshold assessment survey, which is available for public inspection upon request at the Interstate Commerce Commission, Office of Proceedings, Washington, D.C. 20423; telephone 202-343-6989.

Interested parties may comment on this matter by the submission of representations to the Interstate Commerce Commission, Washington, D.C., 20423, on or before March 19, 1974.

[FR Doc.74-4918 Filed 3-1-74;8:45 am]

[I.C.C. Order 120; Rev. S.O. 944]

ERIE LACKAWANNA RAILWAY CO. ET AL.

Rerouting or Diversion of Traffic

It appearing, That:

The Erie Lackawanna Railway Company, Thomas F. Patton and Ralph S. Tyler, Jr., Trustees (EL) and the Wellsville, Addison & Galeton Railroad Corporation (WAG) are unable to transport BCIT 16218 destined Westfield, Pennsylvania, and routed via EL-Wellsville-WAG because of track conditions on the WAG between Wellsville, New York, and Galeton, Pennsylvania.

It is ordered, That:

(a) *Rerouting traffic.* The EL and the WAG being unable to transport BCIT 16218, destined Westfield, Pennsylvania, and routed via EL-Wellsville-WAG, because of track conditions on the WAG between Wellsville, New York, and Galeton, Pennsylvania, the EL is hereby authorized to reroute BCIT 16218 via EL-Penn Central Transportation Company, George P. Baker, Richard C. Bond, and Jervis Langdon, Jr., Trustees-WAG.

(b) *Notification to shippers.* The EL in rerouting BCIT 16218 in accordance with this order shall notify the shipper at the time this car is rerouted or diverted and shall furnish to such shipper the new routing provided under this order.

(c) Inasmuch as the diversion or rerouting of traffic by said Agent is deemed to be due to carrier's disability, the rates applicable to traffic diverted or rerouted by said Agent shall be the rates which were applicable at the time of shipment on the shipments as originally routed.

(d) In executing the directions of the Commission and of such Agent provided for in this order, the common carriers involved shall proceed even though no contracts, agreements, or arrangements now exist between them with reference to the divisions of the rates of transportation applicable to said traffic; divisions shall be, during the time this order remains in force, those voluntarily agreed upon by and between said carriers; or upon failure of the carriers to so agree, said divisions shall be those hereafter fixed by the Commission in accordance with pertinent authority conferred upon it by the Interstate Commerce Act.

(e) *Effective date.* This order shall become effective at 4:30 p.m., February 20, 1974.

(f) *Expiration date.* This order shall expire at 11:59 p.m., February 22, 1974, unless otherwise modified, changed, or suspended.

It is further ordered, That this order shall be served upon the Association of American Railroads, Car Service Division, as Agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement; and upon the American Short Line Railroad Association; and that it be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., February 20, 1974.

INTERSTATE COMMERCE COMMISSION,
[SEAL] R. D. PFAHLER,
Agent.

[FR Doc.74-4915 Filed 3-1-74;8:45 am]

FOURTH SECTION APPLICATION FOR RELIEF

FEBRUARY 27, 1974.

An application, as summarized below, has been filed requesting relief from the requirements of Section 4 of the Interstate Commerce Act to permit common carriers named or described in the application to maintain higher rates and charges at intermediate points than those sought to be established at more distant points.

Protests to the granting of an application must be prepared in accordance with Rule 40 of the General Rules of Practice (49 CFR 1100.40) and filed on or before March 19, 1974.

AGGREGATE-OF-INTERMEDIATES

FSA No. 42809—*Class and Commodity Rates Between Points in Texas.* Filed by Texas-Louisiana Freight Bureau, Agent (No. 677), for interested rail carriers. Rates on salt, common (sodium chloride), also junk (aluminum, brass, copper, etc.), in carloads, as described in the application, from, to, and between points in Texas, over interstate routes through adjoining states.

Grounds for relief—Maintenance of depressed rates published to meet intrastate competition without use of such rates as factors in constructing combination rates.

Tariff—Supplement 47 to Texas-Louisiana Freight Bureau, Agent, tariff

87–J, I.C.C. No. 1159. Rates are published to become effective on March 29, 1974.

By the Commission.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.74–4916 Filed 3–1–74;8:45 am]

[Notice No. 36]

MOTOR CARRIER BOARD TRANSFER PROCEEDINGS

Synopses of orders entered by the Motor Carrier Board of the Commission pursuant to sections 212(b), 206(a), 211, 312(b), and 410(g) of the Interstate Commerce Act, and rules and regulations prescribed thereunder (49 CFR Part 1132), appear below:

Each application (except as otherwise specifically noted) filed after March 27, 1972, contains a statement by applicants that there will be no significant effect on the quality of the human environment resulting from approval of the application. As provided in the Commission's Special Rules of Practice any interested person may file a petition seeking reconsideration of the following numbered proceedings on or before March 25, 1974. Pursuant to section 17(8) of the Interstate Commerce Act, the filing of such a petition will postpone the effective date of the order in that proceeding pending its disposition. The matters relied upon by petitioners must be specified in their petitions with particularity.

No. MC–FC–74819. By order of February 22, 1974, the Motor Carrier Board on reconsideration approved the transfer to Frank J. Thiel, doing business as Trans-Western Express System, Atkinson, Nebr., of the operating rights in Certificates Nos. MC–86539 and MC–86539 (Sub-No. 1), issued March 28, 1949, and January 16, 1961, respectively, to Leo C. Penry, Atkinson, Nebr., authorizing the transportation of hay and livestock, from points within 25 miles of Atkinson, Nebr., including Atkinson, to Sioux City, Iowa, over irregular and regular routes, and corn, oats, mixed feeds, and general merchandise, from Sioux City to Atkinson and points within 25 miles of Atkinson; and mixed feeds, fertilizer (except liquid fertilizer), building materials, farm machinery parts, and seeds, from Sioux City, Iowa, to points in a described area of Nebraska. Stewart A. Huff, 314 Security Bank Building, Sioux City, Iowa 51101, Attorney for applicants.

No. MC–FC–74878. By order of February 25, 1974, the Motor Carrier Board approved the transfer to E. D. C. Transport, Inc., Medford, Mass., of the operating rights in Certificate No. MC–36734 (Sub-No. 9) issued November 8, 1971 to Fleming's Express, Inc., Wrentham, Mass., authorizing the transportation of frozen prepared foods, and fish, including shellfish, from Gloucester and Boston, Mass. to a described area of New York. Robert G. Parks, 189 Nehoiden St., Needham, Mass., 02192, attorney for applicants.

No. MC–FC–74985. By order of February 25, 1974, the Motor Carrier Board approved the transfer to All-State Limousine Service, Ltd., a corporation, 99 East 4th St., New York, N.Y., 10003, of the operating rights in Certificate No. MC–7413 issued May 28, 1958, to Sullivan County Highway Line, Inc., 99 East 4th St., New York, N.Y., 10003, authorizing the transportation of passengers and their baggage, in special operations, between New York, N.Y., on the one hand, and, on the other, points in Ulster and Sullivan Counties, N.Y.

No. MC–FC–74986. By order entered February 25, 1974, the Motor Carrier Board approved the transfer to Thompson Oil Company, Upton, Mass., of the operating rights set forth in Certificate No. MC–30521, issued November 4, 1971, to Overland Stage Coaches, Inc., Millville, Mass., authorizing the transportation of passengers and their baggage, and express and newspapers, in the same vehicles with passengers, between specified points in Massachusetts and Rhode Island; and passengers and their baggage, from points in Massachusetts and Rhode Island within 25 miles of Millville, Mass., to points in New Hampshire, Massachusetts, Connecticut, and Rhode Island, and those in that part of Maine on and south of U.S. Highway 302. Robert S. Phillips, 57 Prospect St., Millford, Mass. 01757, attorney for applicants.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.74–4914 Filed 3–1–74;8:45 am]

CUMULATIVE LIST OF PARTS AFFECTED—MARCH

The following numerical guide is a list of parts of each title of the Code of Federal Regulations affected by documents published to date during March.

3 CFR Page

PROCLAMATIONS:

4273 7921

4 CFR

PROPOSED RULES:

408 8171

6 CFR

150 ..... 8162, 8163

Rulings 7940

7 CFR

354 7923
907 7924
910 8153

PROPOSED RULES:

729 8165
795 7943
1030 8202
1032 8202
1046 8202
1049 8202
1050 8202
1062 8202
1079 8165
1099 8202

9 CFR

78 8153
82 8154
381 8154

10 CFR

9 8162
211 7925

13 CFR

309 7926

14 CFR

39 ..... 7926, 7927
71 ..... 7927, 7928

PROPOSED RULES:

71 8176
73 ..... 7949, 8176
250 8171

16 CFR Page

13 7928

18 CFR

2 7928
154 7928
201 7928

20 CFR

416 8155

PROPOSED RULES:

405 8166

21 CFR

26 8157

22 CFR

PROPOSED RULES:

51 8165

24 CFR

1914 7932
1915 7933

29 CFR

PROPOSED RULES:

601 7946
613 7946
657 7946
673 7946
675 7946
678 7946
690 7946
699 7946
720 7946
727 7946
728 7946
729 7946

33 CFR

PROPOSED RULES:

117 7948
159 8038
160 7948
209 7942

36 CFR Page

PROPOSED RULES:

7 7942

38 CFR

1 7929

40 CFR

180 7929
203 7930

PROPOSED RULES:

52 8175
408 7968
423 8294
431 7968

41 CFR

1–9 7925
6–1 8158
6–60 8158
7–1 8160
7–4 8160

43 CFR

4 7931

45 CFR

250 7930
401 7931

PROPOSED RULES:

149 7946

49 CFR

1033 8161
1341 7925

PROPOSED RULES:

172 7950
173 7950
177 7950
178 7950
179 7950
215 8176
571 ..... 7959–7966, 8176

LIST OF FEDERAL REGISTER PAGES AND DATES—MARCH:

Pages	*Date*
7915–8146	Mar. 1
8147–8307	4

federal register

MONDAY, MARCH 4, 1974
WASHINGTON, D.C.

Volume 39 ■ Number 43

PART II

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

■

MILK IN CHICAGO REGIONAL AND CERTAIN OTHER MARKETING AREAS

Decision on Proposed Amendments to Agreements and Orders

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Parts 1030, 1032, 1046, 1049, 1050, 1062, 1099]

[Docket No. AO-361-A3, etc.]

MILK IN CHICAGO REGIONAL AND CERTAIN OTHER MARKETING AREAS

Decision on Proposed Amendments to Marketing Agreements and to Orders

7 CFR part	Marketing area	Docket No.
1030	Chicago Regional	AO-361-A3.
1032	Southern Illinois	AO-313-A20.
1046	Louisville-Lexington-Evansville.	AO-123-A37.
1049	Indiana	AO-319-A16.
1050	Central Illinois	AO-355-A9.
1062	St. Louis-Ozarks	AO-10-A42.
1099	Paducah, Ky	AO-183-A24.

A public hearing was held upon proposed amendments to the marketing agreements and the orders regulating the handling of milk in the aforesaid marketing areas. The hearing was held, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice (7 CFR Part 900), at Clayton, Mo., on July 14–22, 1970, pursuant to notice thereof issued on June 26, 1970 (35 FR 10692).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Deputy Administrator, Regulatory Programs, on June 4, 1971 (36 FR 11352), filed with the Hearing Clerk, United States Department of Agriculture, his recommended decision containing notice of the opportunity to file written exceptions thereto.

On the basis of exceptions to the recommended decision, a number of changes in the findings and conclusions of that decision concerning the classification and pricing of milk in certain uses were determined to be appropriate. Because such changes were substantive, a revised recommended decision was issued with an opportunity to submit exceptions thereto. Such decision was filed with the Hearing Clerk by the Administrator on August 27, 1973 (38 FR 25756).

The material issues, findings and conclusions, rulings, and general findings of the August 27, 1973, revised recommended decision are hereby approved and adopted and are set forth in full herein, subject to the following modifications:

1. Under the heading "1. *Application of a uniform milk classification plan in the seven markets.*", paragraphs 1 and 9 are changed.

2. Under the heading "2. *Revision of the present Class I classification.*", paragraph 28 is changed.

3. Under the heading "3. *Classification and pricing of milk not needed for Class I use.*", paragraphs 3, 5, 7, 34, 35 and 45 are changed and two new paragraphs are added after paragraph 51.

4. Under the subheading "4.(a) *Other source milk definitions.*", paragraph 5 is changed and a new paragraph is added after paragraph 8.

5. Under the subheading "4.(c) *Classification of milk transferred or diverted to other plants.*", a new paragraph is added after paragraph 9.

6. Under the subheading "4.(d) *Classification of end-of-month inventory.*", paragraph 4 is changed.

7. Under the subheading "4.(e) *Shrinkage allowances.*", paragraphs 7 and 9 are changed and three new paragraphs are added at the end.

8. Under the subheading "4.(f) *Allocation of receipts to utilization.*", paragraphs 11, 12, 14, and 15 are changed and a new paragraph is added at the end.

9. Under the heading "5. *Changing the butterfat differentials.*", paragraphs 9–11 are deleted and five new paragraphs are substituted therefor.

10. Under the heading "6. *Advance announcement of prices for surplus milk.*", paragraphs 3 and 4 are changed and a new paragraph is added after paragraph 6.

The material issues on the record of the hearing relate to:

1. Application of a uniform milk classification plan in the seven 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 inventories;

(e) Shrinkage allowances;

(f) Allocation of receipts to utilization;

(g) Obligations relative to other source milk; and

(h) Reports;

5. Changing the butterfat differentials; and

6. Advance announcement of prices for surplus milk.

General setting of the hearing. Prior to the 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 Federal 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, Associated Milk Producers, Inc., Dairymen, Inc., Mid-America Dairymen, Inc., and Pure Milk Products Cooperative petitioned the Department for a hearing on various proposals relating to the classification and pricing of milk in the seven subject markets. These four cooperative associations, which will be referred to in this decision as the "principal" cooperatives, collectively represent a substantial number of the producers associated with each of these markets.

The main thrust of the cooperatives' proposals was the proposed use of an identical classification plan under each of the seven orders. As proposed, the new plan would have three classes of utilization rather than the two classes now provided in each order. 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 proposals by the principal cooperatives would provide that the Class III price under each order be the Minnesota-Wisconsin manufacturing milk price for the month. They proposed that the new Class II price under each order be the Minnesota-Wisconsin price plus 10 cents. They proposed also that a single handler butterfat differential apply to all three classes. This differential, which would be identical among the seven orders, would be based on the Chicago butter price times a factor of 0.115.

These proposals in general were endorsed at the hearing by the Association of Operating Cooperatives on behalf of six Wisconsin-based producer groups. These cooperatives proposed, however, that the price to be applicable to milk used in butter and nonfat dry milk be the lower of the Minnesota-Wisconsin price or a butter-nonfat dry milk formula price. Another cooperative association, Land O'Lakes, Inc., proposed that the lower of the Minnesota-Wisconsin price or the product formula price apply to all Class III uses of milk. Its butter-nonfat dry milk formula price would be lower relative to the formula price proposed by the Association of Operating Cooperatives.

A uniform classification plan for the seven 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 seven subject markets. Instead of 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 scheme.

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 seven markets.* Each of the seven orders under consideration should provide for the same basic classification plan. As adopted herein, each order would provide for three classes of utilization, with the milk uses included in each class being the same for each order. Likewise, the same basic procedure would be used under each order for classifying milk transferred or diverted from pool plants to other plants, and for allocating a handler's receipts

to his utilization to determine the classification of his producer milk. Each order would use the same Class II and Class III price formulas. Also, a single butterfat differential would be used under all orders.

The statutory authority for Federal milk orders specifies that an order shall classify milk purchased by handlers from producers or associations of producers in accordance with the form in which or the purpose for which the milk is used. When each of the seven 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 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.

Widespread distribution patterns prevail particularly for the processors of specialty products such as yogurt and sterilized cream items. Although the volume of these 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.

Several cases cited on the record serve to illustrate the widespread movements of packaged specialty products. At the time of the hearing a handler regulated under the Paducah order was distributing half and half or whipping cream in 20 federally regulated marketing areas, including six of the markets involved in this hearing. Similarly, a handler under the Louisville-Lexington-Evansville order was selling half and half, yogurt or sour cream in 12 Federal order markets. A processor with plants in New York and Ohio was selling yogurt in nearly every State east of the Mississippi River, which includes most of the markets involved in this proceeding.

Although the seven 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 seven 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 Federal 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.

A decision on uniform classification and pricing provisions for 32 other Federal orders is being issued concurrently with this seven-market decision. The format of order provisions adopted herein is comparable to the format set forth in the 32-market decision. 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. Moreover, coordination of the orders in this respect will be helpful to those in the industry who must work with more than one order, a situation that is becoming increasingly common as cooperatives and handlers continue to expand their marketing activities into more and more regulated markets.

Each of the seven orders under consideration is set forth in its entirety at the end of this 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 substantive 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 seven 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 milk shake 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, and 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 seven 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 herein included in Class I are presently included in the Class I

[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.

classification under each of the seven orders. Only the Chicago Regional order, however, now includes any milk shake mixes in Class I. The Paducah order is the only one of the seven orders that includes sterilized fluid milk products (other than cream items) in Class I.

The adopted Class I classification would not include cream products or mixtures of cream and milk or skim milk (such as half and half) containing 9 percent or more butterfat. Sweet cream (except that in frozen, concentrated, aerated or sterilized form) and half and half are presently Class I products under the seven orders. Grade A sour cream is a Class I product under all but the Indiana order, while Grade A sour cream mixtures are Class I items under all but the Indiana and Paducah orders. Also, non-Grade A sour cream is presently a Class I product under the Paducah and Louisville-Lexington-Evansville orders.

Under the adopted changes, yogurt would not be a Class I product. A Class I classification for yogurt, which is now in the surplus class under these orders, was proposed by the principal cooperatives.

Two of the seven orders now include ending inventories of packaged fluid milk products in Class I. As discussed later, such inventories would be classified as Class III 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 milk shake 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.

Milk shake 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.

The principal cooperatives proposed that milk shake mixes that "are not further processed in a commercial establishment" be in Class I. They proposed that all other milk shake mixes be in Class II. The national organizations of fluid milk and ice cream processors, on the other hand, asked that all milk shake mixes be included in the lowest classification.

Milk shake 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 food stores and on home delivery routes. The major outlet for milk shake 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.

Milk shake 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 milk shake 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 milk shake 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 milk shake mixes that are being sold in competition with frozen desserts. For this purpose, the total solids content of the product should be used. A standard of 20 percent or more total solids should encompass those milk shake 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.

No exception to the Class I classification of milk should be made for fluid milk products in sterilized form. This was proposed by the principal cooperatives and the national organizations of fluid milk and ice cream processors. A group of handlers in the Indiana and Louisville-Lexington-Evansville markets proposed, however, that all sterilized products in rigid metal or glass containers be excluded from Class I.

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 the principal 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, the 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 seven 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 prod-

uct 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 generally 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 believed 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 seven 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 whether or not a particular product is included in the definition.

A listing of products alone in the fluid milk product definition may not clearly indicate the classification of new milk products developed for fluid consumption. With certain limited exceptions noted, the fluid milk product definition is intended to include all milk products that are distributed for use as beverages. Although a new milk beverage introduced on the market might not be encompassed within the list of named products, it should be treated as a fluid milk product, nevertheless, if its composition is similar to that of the listed products. This will be the result of the standards of product composition for fluid milk products herein adopted.

As indicated, the adopted composition standards would embrace any fluid or frozen milk product not specified as a Class II or Class III product that contains by weight at least 80 percent water and 6.5 percent nonfat milk solids, and less than 9 percent butterfat and 20 percent total solids, including both milk solids and non-milk solids. The 9 percent butterfat standard coincides with the butterfat percentage adopted herein to delineate the mixtures of cream and milk or skim milk to be included in Class II. The total solids and water percentages represent a reasonable measure of the fluidity of those products that normally are consumed as beverages. The 6.5 percent nonfat milk solids standard is used to exclude from the fluid milk product definition those products which contain some milk solids but which are not closely identified with the dairy industry, such as chocolate flavored drinks in "pop" bottles.

These composition standards are chosen so as to conform as closely as possible to the water, solids and butterfat content of those products specifically listed in the fluid milk product definition, i.e., the traditional milk beverages. It is intended that these standards apply only to milk products, and only to such products that are being marketed for consumption in fluid form. Such standards would not be applied to products such as soups, which are not customarily thought of as milk products, or to products that would be a type of frozen dessert marketed for consumption in frozen form.

In determining whether or not a milk product in fluid form falls within the composition standards of the fluid milk product definition, such standards should be applied to the composition of the product in its finished form, not to the composition of the product on a skim equivalent basis. A new product not intended for beverage use might contain in its finished form somewhat more than the maximum total solids specified for a fluid milk product under the adopted composition standards. On this basis, the product would not fall within the fluid milk product definition. Application of the composition standards to this product on a skim equivalent basis, however, could result in the product meeting such standards and thus being defined as a fluid milk product.

As pointed out by producers in their exceptions, applying the composition standards to products in the form in which marketed could exclude from the fluid milk product definition a new concentrated fluid product that is intended to be consumed as a beverage only after reconstitution. For the present time, however, the composition standards should be applied to a product in its finished form. A refinement of such standards may be appropriate once there has been an opportunity to evaluate their applicability under actual market conditions.

It should be noted that under the adopted classification provisions accounting for a new product on other than a skim equivalent basis would be limited solely to determining whether or not the product meets the composition standards of the fluid milk product definition. For all other purposes under the order, the product would be accounted for on a skim equivalent basis.

In applying the 6.5 percent nonfat milk solids standard, it is intended that this standard apply to such solids in any form except sodium caseinate. Under the "filled milk" provisions in these orders, sodium caseinate in any product is treated as a nonmilk ingredient. 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 deveolpment of new milk products, as handlers contended. should not deter the development of new 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.* The present Class II classification of milk under each of the seven orders should be redesignated as Class III, and a new Class II classification that would include certain products now in Class I and Class II should be established. The new 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 the redesignated Class III classification should be the basic formula price for the month.

Class II milk should include skim milk and butterfat disposed of in the form of eggnog, yogurt or a "fluid cream product", i.e., cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients. Any product containing 6 percent or more nonmilk fat (or oil) that resembles any of these products likewise should be in this class. Also, eggnog, yogurt and fluid cream products that are in inventory at the end of the month in packaged form should be in Class II.

Included also in this classification should be skim milk and butterfat used to produce cottage cheese, lowfat cottage cheese, dry curd cottage cheese, milkshake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts, frozen dessert mixes, any concentrated milk product in bulk fluid form (unless used in a Class III product), plastic cream, frozen cream, anhydrous milkfat, custards, puddings, pancake mixes, and formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers.

A Class II classification should apply also to bulk fluid milk products and bulk fluid cream products disposed of to any commercial food processing establishment (other than a milk or filled milk plant) at which food products (other

than milk products and filled milk) are processed and from which there is no disposition of fluid milk products or fluid cream products other than those received in consumer-type packages.

Class III milk should include skim milk and butterfat used to produce cheese (other than cottage cheese, low fat cottage cheese and dry curd cottage cheese), butter, any milk product in dry form, any concentrated milk product in bulk fluid form that is used to produce a Class III product, evaporated or condensed milk (plain or sweetened) in a consumer-type package, evaporated or condensed skim milk (plain or sweetened) in a consumer-type package, and any product not otherwise specified as a Class I, Class II or Class III product.

Other Class III uses should include bulk and packaged fluid milk products and bulk fluid cream products in inventory at the end of the month, and that portion of modified (by the addition of nonfat milk solids) fluid milk products not included in Class I. Class III should include any fluid milk product or Class II product accounted for on a "disposed of" basis that is used for animal feed, or is dumped if the market administrator is notified of such dumping in advance and is given the opportunity to verify such disposition. Also, shrinkage within certain limits should be classified as Class III milk.

As described later, the classification and pricing adopted herein for milk not needed for Class I use differs in some respects from that set forth in the June 4, 1971, recommended decision and the August 27, 1973, revised recommended decision.

The Class II classifications under the present orders are essentially alike. Class II uses include skim milk and butterfat used to produce any product other than a fluid milk product, and skim milk and butterfat in fluid milk products that are disposed of to commercial food processing establishments, dumped, disposed of for animal feed, or in inventory at the end of the month. Under the Southern Illinois and Central Illinois orders, such classification of inventory is limited to fluid milk products in bulk form. The orders also include shrinkage (within certain limits) in this classification and that portion of the skim milk equivalent of nonfat milk solids added to fluid milk products that is not classified as Class I milk.

Under five of the seven orders, the present Class II price is the Minnesota-Wisconsin manufacturing milk price. The Indiana order establishes the Class II price at the lower of the Minnesota-Wisconsin price or a butter-nonfat dry milk formula price. Under the Louisville-Lexington-Evansville order, the Class II price for the months of September through March is the Minnesota-Wisconsin price. For the remaining months, it is the Minnesota-Wisconsin price less 10 cents.

The principal cooperatives proposed that the present Class II classification under each order be redesignated as Class III and that many of the uses now included in the surplus class be included in a new, higher-priced Class II classification. These uses would include all soft and hard cheeses except cheddar cheese, frozen desserts, milk shake mixes sold to commercial establishments for further processing, eggnog, cream in plastic, frozen, aerated or sterilized form, anhydrous milkfat, sour cream, sour mixtures (dips), 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, the cooperatives proposed that the new Class II also include all cream products now in Class I, i.e., cream, mixtures of cream and milk or skim milk containing 9 percent or more butterfat, sour cream and sour mixtures. Under their proposal, producer milk allocated to these uses would be priced under each order at the Minnesota-Wisconsin price plus 10 cents.

Of the present Class II uses, only cheddar cheese, butter, dried products, dumpage, animal feed, shrinkage, ending inventory, and the non-Class I portion of modified fluid milk products would remain in the lowest class under the cooperatives' proposal. These groups asked that milk in such uses be priced under each order at the Minnesota-Wisconsin price.

In support of their proposed classification plan, proponents contended that the present differences in the demand for certain groups of milk products support three different price levels, or classes of utilization, for milk. They stated that the demands for cheddar cheese, butter and nonfat dry milk are quite sensitive to changes in product prices, thus warranting the classification of milk used in such products in the lowest priced class. Proponents contended, on the other hand, that other products presently in Class II should be included in an intermediate-priced class since the demands for such products are less sensitive to price changes.

The principal cooperatives testified also that handlers generally demand a regular supply of producer milk for many of their proposed Class II uses and that alternative supplies of milk or milk products for such uses cannot be obtained for less than the Class II price they propose. Moreover, they claimed that a higher price for some of the surplus milk uses would result in products other than fluid milk products bearing some of the burden of attracting a total supply of milk for the market.

The principal cooperatives contended further that a lower price should apply to milk used in cream and cream mixtures now in Class I. They pointed out that the present classification has placed these products in a poor competitive position in the market relative to nondairy substitutes. Indicating that the industry already may have waited too long to shift cream products to a lower price category, proponents urged a lower price for milk used in such products with the hope that the declining demand for cream could be halted.

The classification plan proposed by the principal cooperatives was generally endorsed by other cooperative associations operating in or near the seven markets. One group of cooperatives urged, however, that all "American" cheeses, rather than just cheddar cheese, be included in Class III. "American" cheeses are commonly considered to include cheddar cheese, colby cheese, granular or stirred curd cheese, and washed curd cheese. Another cooperative proposed that cheddar cheese and colby cheese be in separate classes, but with little difference in the prices established for such classes. Three producer groups also proposed that yogurt be included in the proposed new Class II, rather than in Class I as proposed by the principal cooperatives.

As noted earlier, 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. The two handler groups stated that if a three-class system is adopted certain products proposed by the principal cooperatives to be in the new Class II should be included, instead, in Class III. They urged that the lowest classification apply to frozen desserts (including those with yogurt flavoring), puddings, sour cream, sour mixtures, and dispositions to commercial food processors.

Other handler groups and individual handlers likewise opposed a higher price on milk used in certain manufactured products. Particular attention was focused on milk and condensed products sold to food processors and on evaporated milk. Representatives of the "soft-serve" frozen dessert industry urged that milk shake mixes for commercial use be in the lowest class. Some handlers advocated that the only classification change be that of classifying cream products in a lower class. They proposed that any action to maintain producer returns at present levels because of a change in the classification of cream be limited to increasing the Class I price.

Producer milk not needed for Class I use must be priced at a level that insures the orderly disposition of the milk. Normally, excess milk supplies must be channeled into manufacturing uses. This requires that such milk be priced competitively with manufacturing grade milk if the market is to be cleared of its reserve supplies. At the same time, 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.

Several Wisconsin and Minnesota cooperative associations engaged in the manufacture of butter and nonfat dry milk proposed that all seven of the orders under consideration provide for the use of a butter-nonfat dry milk formula for pricing surplus milk. Under the proposal of the Wisconsin cooperatives, the lower of the Minnesota-Wisconsin price or a butter-nonfat dry milk formula price would apply to producer milk processed into butter and nonfat dry milk. Other proposed Class III uses would be priced at the Minnesota-Wisconsin price. A co-

operative based in Minnesota proposed that the lower of the Minnesota-Wisconsin price or a butter-nonfat dry milk formula price apply to all Class III uses.

Different formula prices were proposed, however, by these producer groups. The Wisconsin cooperatives urged the adoption of essentially the same butter-nonfat dry milk formula contained in the Indiana order. The formula proposed by the Minnesota cooperative, on the other hand, would yield a price 12 cents per hundredweight lower than the Indiana formula because of the greater processing costs for butter and nonfat dry milk, or "make allowance," built into the formula. In 1969, the proposed pricing would have returned 17 to 29 cents (depending on the formula used) per hundredweight less than the use of the Minnesota-Wisconsin price alone.

The basic contention of these cooperatives was that plants processing butter and nonfat dry milk from a Class I market's surplus milk cannot afford to pay the Minnesota-Wisconsin price for milk so used. They indicated that the difference between the market value for these products and the Minnesota-Wisconsin price is considerably less than the amount required to cover the operating costs of such plants. Such plants associated with a fluid market, proponents claimed, have particularly high costs of operation because of the underutilized plant capacity that results when there is a heavy demand for milk at bottling plants. The cooperatives maintained that the class price for milk used in butter and nonfat dry milk must assure processors of such products a minimum processing allowance.

As pointed out, producer milk not needed for Class I use should not be priced lower than is necessary for the orderly disposition of the milk. Presently, handlers and cooperative associations in the seven markets are generally disposing of milk not needed for Class I use at prices that are not less than the Minnesota-Wisconsin price adopted herein as the minimum price for surplus milk. The Minnesota-Wisconsin price is now the lowest price for surplus milk under the St. Louis-Ozarks, Paducah, Southern Illinois, Central Illinois, and Chicago Regional orders. There is no indication that handlers or cooperatives in these five markets are experiencing difficulty in disposing of excess milk supplies at this price level. This includes the Chicago Regional market where nearly one-half of the 7.115 billion pounds of producer milk in 1969 was disposed of in Class II uses.

In the Louisville-Lexington-Evansville market where the Minnesota-Wisconsin price also applies to surplus milk except in certain months, reserve supplies likewise are being disposed of at not less than the Minnesota-Wisconsin price. During the period of January 1969 through June 1970, 176 million pounds of the market's 424 million pounds of Class II producer milk were disposed of by a cooperative to nonpool plants for manufacturing at not less than this price level. This included sales in those months (April–August) when the Class II price under the Louisville-Lexington-Evansville order is the Minnesota-Wisconsin price less 10 cents.

Although the Indiana order now provides for the use of a butter-nonfat dry milk formula price in combination with the Minnesota-Wisconsin price, there is no indication that handlers or cooperatives in this market are disposing of their surplus milk under conditions uniquely different from those faced by handlers in the other nearby markets under consideration. Much of the producer milk associated with the Indiana market is, in fact, produced in the State of Wisconsin.[2] Such milk not needed for Class I use by Indiana handlers is either transferred from Indiana pool plants back to manufacturing plants in the Wisconsin production area or diverted directly to such plants from nearby farms. Processors in Wisconsin buying milk for manufacturing use are generally paying not less than the Minnesota-Wisconsin price for such milk. Moreover, handlers in the Indiana market are not limited to butter and nonfat dry milk uses in disposing of milk not needed for Class I purposes. Of the total quantity of milk processed in this market into manufactured products in 1969, only one-fifth was used in butter and nonfat dry milk.

Under these circumstances, it must be concluded that conditions in each of the seven markets support the use of the Minnesota-Wisconsin price as the minimum price for surplus milk.

Certain uses of producer milk not needed for Class I purposes should be priced at a level 10 cents per hundredweight higher than the Minnesota-Wisconsin price. These uses, which are included in a new Class II classification, were set forth at the beginning of this discussion on pricing surplus milk.

Of the products adopted herein for inclusion in the new Class II, one of principal importance is 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.

In these markets cottage cheese has been considered for pricing purposes merely as one of various uses for producer milk not needed for the Class I market. There are, however, 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 the market, as is the case with respect to butter and nonfat dry milk, for instance. Regulated handlers, in conjunction with their fluid milk sales, generally move cottage cheese through the same retail and wholesale outlets. In addition to supplying the Class I requirements of handlers, producers are expected to make available sufficient supplies of fresh, high quality milk for the production of cottage cheese.[3] This is not the case with respect to butter, nonfat dry milk, or hard cheese.

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 at 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. Also, cottage cheese, unlike most other manufactured products, has a more limited storage life and must be processed on a regular basis. Thus, as in the case of fluid milk products, handlers require that adequate supplies of producer milk be made available at their distributing plants at all times for cottage cheese use.

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. The local producer supplies are the only dependable supplies of quality fluid milk within the normal milksheds of the seven subject markets for cottage cheese production. In these markets, any nearby milk of the necessary quality is attached to other regulated fluid milk markets and would be available to handlers only sporadically. With the handling and transportation charges, the cost of this milk to handlers would be at least as high as the adopted Class II price.

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 cottage cheese milk. 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 relatively bulky and perishable item, from distant areas to outlets in the seven markets would generally negate any apparent price advantage attributable to differences in order prices applicable to cottage cheese milk.

Milk used in yogurt should be priced at the Class II price level rather than at the Class I level as the principal co-

[2] Official notice is taken of the publication issued February 1971 by the Dairy Division, Consumer and Marketing Service, U.S. Department of Agriculture (C&MS-50 (1969)), titled "Sources of Milk for Federal Order Markets." This publication indicates that in December 1969 over 26 percent of the producer milk on the Indiana market was produced in Wisconsin.

[3] The reliance on producers for milk for cottage cheese production is not unique to the seven markets under consideration. As noted in the November 1970 issue of Federal Milk Order Market Statistics, 80 percent of the creamed cottage cheese made in the United States in 1969 was processed from milk regulated under Federal milk orders. Official notice is taken of this publication which was issued by the Dairy Division, Consumer and Marketing Service, U.S. Department of Agriculture, Washington, D.C.

operatives proposed. 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 in the seven markets under consideration. 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 indicated that milk is preferred. 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 production, these conditions warrant that producer milk used in yogurt be priced at a level above the price for milk disposed of through the traditional residual uses for surplus milk.

Class II also should include frozen desserts (including commercial milkshake and ice milk mixes), custards, puddings, pancake mixes, dietary and infant formulas, and sales of bulk milk and cream to commercial food processors for use in food products. In the initial recommended decision, such uses of skim milk and butterfat were proposed to be included in Class III. Upon consideration of exceptions filed to that decision by cooperatives, it was concluded in a revised recommended decision, and it is so concluded in this decision, that market conditions support a higher price for producer milk in such uses than was initially recommended.

As producers pointed out in their exceptions, the rationale set forth in the initial recommended decision for including cottage cheese in an intermediate class is in several respects applicable to these other products just listed. The demand for producer milk used in these products is related closely to the current consumer demand for such products. Thus, handlers normally want adequate supplies of producer milk made available at their plants in the quantities and at the times needed for these uses. This is in contrast to the more storable residual "hard" products. Also, the processing of such products often takes place at the market center, which entails a greater hauling expense for producers than when reserve milk is processed in the production area. Moreover, it is doubtful that handlers in general would be able to obtain alternative supplies of milk or product ingredients at less than the cost of producer milk under the adopted pricing provisions.

Cooperatives proposed that the Class II price in these markets be set at 10 cents over the Minnesota-Wisconsin price. The national trade 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 in the seven-market area. Some regulated handlers rely regularly on producer milk for use in frozen desserts. Other handlers rely on purchases of condensed skim milk or nonfat dry milk 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 seven-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 seven markets at the times and places, and in the quantities, needed for the several Class II uses.

It is recognized that under the varied conditions just described an individual handler may find that producer milk does not represent the cheapest source of milk for his Class II uses. Presumably the alternative source would be concentrated forms of milk since health regulations would not permit the receipt of ungraded supplies of whole milk at a pool distributing plant, and graded supplies would not be available on a regular basis at less than the Class II price. Under the revised allocation provisions adopted herein, receipts of nonfluid other source milk such as condensed skim milk or nonfat dry milk that are used in a Class II product would be allocated directly to the handler's Class II uses, with no obligation applying under the order to such milk. Under this arrangement, the handler could choose to use the other source milk without the cost impact of down-allocation should the cost of such milk become less than the cost of producer milk. The handler thus could rely upon whichever source of milk best fits his competitive and operational circumstances.

Classifying the several types of cream items, some of which are now in Class I while others are in Class II, in the new 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 often 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 the same purpose. The same classification for these cream products will result in uniform pricing to handlers for milk used in products competing in the same trade channels for the same users.

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 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 approximately 2 percent of the present Class I market. Thus, this classification change will have relatively little effect on the total 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 if a plant meets the pooling requirements of the order. To accommodate this, certain changes are necessary in those pool plant definitions that make specific reference to the movement of cream.

Eggnog should be a Class II product, rather than a Class I product as was proposed in the initial recommended decision.

The principal cooperatives proposed that eggnog, which is presently a Class II product under each order, be included in the new intermediate price class. Although recognizing that eggnog is a beverage, the cooperatives contended that eggnog should not be a Class I product because of its relatively high butterfat content (6 percent or more) and its highly seasonal demand. This position was supported by handlers.

In their exceptions to the recommended inclusion of eggnog in Class I, handlers and producers pointed out that this classification would place eggnog at a competitive disadvantage with imitation eggnog containing nonmilk fat. It was noted that, as at present, only those "filled" products containing less than 6 percent nonmilk fat (or oil) would be included in Class I under the revised classification plan.

An estimated 40 percent of the marketings of eggnog-type products is in the form of imitation eggnog. Since imitation eggnog would not be a Class I product, it is concluded that eggnog similarly should be included in a lower class. This will enhance the competitive position of the product in the marketplace.

Certain handlers proposed that eggnog flavored fluid milk products be included in the same class as eggnog. This should not be adopted. The record in no way demonstrates that a Class I classification for fluid milk to which eggnog flavoring has been added is any less appropriate than for fluid milk to which chocolate or some other flavoring has been added. Returns to producers for milk disposed of in the form of a flavored fluid milk product should be the same regardless of the type of flavoring used.

With the establishment of a new intermediate price class, it is appropriate that any filled products that resemble the proposed Class II products made with milk fat likewise be included in this new class. The substitution of nonmilk fat for milk fat in a product merely changes the composition of the product and not its use. For competitive reasons, a comparable classification of products made with milk fat and their filled counterparts is necessary.

Condensed milk or skim milk in bulk, plastic cream, frozen cream and anhydrous milk fat are "intermediate" products that also should be included in Class II. These products are not end uses in themselves but instead are used in making other products, including frozen desserts and food products such as candy and soup. Under the classification adopted herein, frozen desserts and food products are Class II uses for milk. Accordingly, producer milk used in the several intermediate products likewise should be priced at the Class II level.

In the revised recommended decision, no recognition was given to the possible use of condensed milk or skim milk in making a Class III product. Cooperatives pointed out in their exceptions, however, that such condensed products are processed at times into dried products, which would be a Class III use under the revised classification plan. The cooperatives urged in this case that the milk used to produce the condensed product be classified as Class III milk.

Such classification requires, of course, that the condensed product be followed to its ultimate use. Presumably, the final disposition of the condensed product can be easily ascertained when it is moved to a plant containing only drying facilities. Should the condensed product be moved to a plant having mixed processing operations and receipts of condensed milk from different sources, ascertainment of the ultimate use of the condensed product in question may be difficult, if not impossible. It is concluded, however, that to the extent that it can be satisfactorily determined that the ultimate use of the "intermediate" condensed product was in a Class III product the lowest classification should apply to the producer milk used in the condensed product.

A Class II classification should not apply to evaporated or condensed milk or skim milk in consumer-type containers as cooperatives proposed. Also, such classification should not apply to certain hard cheeses. Such storable products should be included in the redesignated Class III classification. 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 seven orders.

In proposing a generally uniform classification plan for the seven 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 these 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 seven 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.

Presently, fluid milk products (which include cream) 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. Under the revised classification plan, cream no longer would be defined as a fluid milk product. To facilitate the application of other provisions of each order, however, it is desirable 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.

This is a different accounting procedure than was proposed under the initial recommended decision. As proposed initially, fluid cream products received at a pool plant from any source in consumer-type packages and disposed of, or held in inventory, in the same container in which received would not have been considered as other source milk. Such products would have been treated as "pass-through" products and as such would not have been subject to the allocation and pricing provisions of the order. A somewhat similar treatment would have been accorded receipts of yogurt. Receipts of packaged eggnog (a Class I product under the initial recommendations) would have been accounted for under the other source milk provisions in the same manner as fluid milk products.

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 low-fat cottage cheese, the receipts of dry curd would be allocated under the adopted provisions directly to the handler's Class II utilization. No handler obligation would apply under the order to such receipts.

The orders should provide that products manufactured in a pool plant during the month and then reprocessed, converted into, or combined with another product in the same plant during the same month not be defined as other

source milk. A typical processing operation would be for a handler to make condensed skim milk from producer milk and then use the condensed product in making ice cream. It is intended under this situation that the producer milk be considered as having been used to produce ice cream. The condensing operation is merely one of the steps performed by the handler in processing ice cream from raw milk.

Exceptions to this accounting procedure raised the question as to whether there might be some difficulty in determining the source of the condensed skim milk that is reprocessed in the plant should a handler use during the month condensed skim milk not only from his current condensing operation but perhaps from inventory held over from the previous month or purchases from another plant. If this situation arises, the condensed skim milk produced in the plant during the current month should be considered as having been reprocessed first before any condensed skim milk from other sources.

Other source milk should include any disappearance of manufactured milk products for which the handler fails to establish a disposition. Four of the seven orders now have a provision concerning the unaccounted for disappearance of such products. The other source milk definitions in the Chicago Regional, Paducah and Louisville-Lexington-Evansville 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.*—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, each of the seven orders provides 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 Class II.

The principal cooperatives proposed that the amount of a modified fluid milk product that is classified as Class I be the actual weight of the modified product rather than the weight of a like unmodified product.

Proponents stated that when verification of the nonfat milk solids used to modify natural milk and skim milk involves laboratory tests of the modified product, the amount of modification is expressed as a percentage of the weight of the modified product. Where laboratory analysis is used to determine the total milk solids disposed of in modified products, proponents contended that administrative procedures could be simplified by using the actual product weight factor.

There was no showing of the extent to which laboratory analysis of modified products is used in verification by market administrators in these seven markets. Also, there was no claim that any saving in administrative cost would be possible under the procedure proposed by the cooperatives in those instances where the market administrator determines the amount of solids added to modified products by using production records rather than by laboratory tests of packaged products. Accordingly, it is not clear from this record that the proposed procedure 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 which 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 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 larger weight factor would add about one-tenth cent (ranging from 0.09 cent under the Chicago Regional order to 0.11 cent under the St. Louis-Ozarks order) to a handler's obligation under the order per gallon of such product sold.

The present method of classifying modified fluid milk products increases total Class I sales only to the extent of the volume of the unmodified product that the added nonfat milk solids replaces. In the absence of evidence that the present procedure is inappropriate, it should be continued. The present procedure is used under Federal orders generally and, therefore, carries out the objective of uniformity in this respect.

Handlers may add nonfat milk solids to several of the proposed Class II products, such as half and half and light cream. Each order should provide in this case that the entire weight of the skim milk equivalent of the solids added be classified in Class II. This procedure would differ from that applicable to modified fluid milk products in that no part of the skim milk equivalent of the added solids would be classified in the lowest class. As described in detail later, nonfat dry milk or condensed milk that is added to a Class II product would be allocated directly to the handler's Class II use. Thus, classification of the entire skim milk equivalent in Class II would not affect adversely the handler's pool obligation under this allocation procedure.

(c) *Classification of milk transferred or diverted to other plants.* Certain changes should be made in the provisions of each order that prescribe the classification of fluid milk products that are transferred or diverted from a pool plant to another plant. Several of the changes become necessary with the adoption of three classes of utilization in place of the present two classes. Other changes are appropriate for purposes of uniformity among orders and clarity in the classification of milk.

Under the adopted classification plan, fluid cream products would be classified as Class II products. If such products are transferred to another plant in packaged form, the skim milk and butterfat contained therein should be classified as Class II milk since these items are moved in final form. The classification of fluid cream products when disposed of in bulk form, however, is determinable only by following the movement of the bulk product to its final 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 proposed 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 attributa-

ble to the Class I allocation at a Federal order plant of fluid milk products transferred in bulk from the nonpool plant to the regulated plant would be assigned next. Such use would be assigned, first, to the nonpool plant's remaining unassigned receipts of fluid milk products from plants fully regulated under that order and, second, to any such remaining receipts from plants fully regulated under other orders.

Additional unassigned Class I utilization at the nonpool plant then would be assigned to the plant's receipts of Grade A milk from dairy farmers and unregulated nonpool plants that are determined to be regular sources of Grade A milk for the nonpool plant. Any remaining unassigned receipts of fluid milk products at the nonpool plant from plants fully regulated under any order would be assigned to any of the nonpool plant's remaining Class I utilization, then to its Class III utilization, and then to its Class II utilization.

Following these assignments, any receipts of bulk fluid cream products at the nonpool plant from pool plants and other order plants would be assigned to the nonpool plant's remaining unassigned utilization in each class. Such assignment would be made in sequence beginning with the lowest class.

In their exceptions, producers contended that in assigning transfers or diversions of fluid milk products or fluid cream products to a nonpool plant's available Class II and Class III utilization preference should be given to the higher utilization. Such preferential assignment is not consistent, however, with the basis on which a new intermediate price class is being established. Provision for the new class merely recognizes that some additional value attaches to producer milk delivered to pool plants for use in certain products. It is not intended that such utilization of producer milk at other plants necessarily be reserved for local producers.

In determining the classification of any transfers or diversions from a pool plant to a nonpool plant, the utilization of any transfers from the nonpool plant to another unregulated nonpool plant also must be established. In this case, the same assignment priorities just outlined should apply also at the second nonpool plant.

Each of the seven orders now provides that transfers of fluid milk products from a pool plant to a producer-handler shall be classified as Class I milk. The St. Louis-Ozarks order requires also that such transfers to a producer-handler under any other order likewise shall be Class I. This additional requirement should apply under each of the orders.

Under the Federal order program, producer-handlers, in their capacity as handlers, are exempt from the pricing and pooling provisions of the various orders. In consideration of this exemption, each order 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.

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 all reserve supplies for their Class I market. 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.

In addition to the Class I classification of all fluid milk products transferred to a producer-handler, the Chicago Regional order provides for a similar classification of all fluid milk products transferred to an "exempt distributing plant." Also, a similar classification applies under the St. Louis-Ozarks order to all fluid milk products transferred to a plant operated by a "governmental agency." Under each of these two orders, the adopted method for classifying bulk fluid cream products transferred to a producer-handler should apply likewise to transfers of bulk fluid cream products to these two other types of plants.

The classification of milk 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, such mileage (or area) limitations apply under the Chicago Regional, Louisville-Lexington-Evansville and St. Louis-Ozarks orders. Until recently, similar limitations applied also under the Southern Illinois and Central Illinois orders. These limitations under the latter two orders were removed by amendatory actions (35 F.R. 12267, 18107) subsequent to the classification hearing on which this decision is based.

The Chicago Regional order provides that fluid milk products transferred in bulk form from a pool plant to a nonpool plant located outside the States of Wisconsin, Minnesota, Iowa, Illinois, Indiana, Michigan, or Ohio shall be classified as Class I milk to the extent of the nonpool plant's Class I disposition, regardless of where such disposition is made. Transfers to nonpool plants located in these States, on the other hand, are classified on a basis that assigns the nonpool plant's Class I utilization to its various sources of receipts in accordance with where the plant disposes of its Class I milk.

Under the Louisville-Lexington-Evansville order, milk transferred or diverted to a nonpool plant located 250 miles or more from the nearer of Louisville, Kentucky, or Evansville, Indiana, is classified as Class I milk regardless of its use at the nonpool plant. Recognition is given under the classification provisions of such order to the nonpool plant's actual utilization in the case of milk transferred to less distant plants.

Classification provisions similar to those for the Louisville-Lexington-Evansville order are contained in the St. Louis-Ozarks order. In this case, the automatic Class I classification applies on transfers and diversions of milk to plants located more than 350 miles from St. Louis.

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 seven markets.

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 the Louisville-Lexington-Evansville and Paducah orders to only those movements in the form of interplant transfers. These two orders do not permit milk to be moved to other Federal order plants by diversion.

In connection with developing uniform classification provisions for the seven 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 provision will foster the efficient handling of surplus milk in these markets. 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.

The handling of surplus milk can be facilitated 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.

(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, five of the orders classify all ending inventories of fluid milk products (which now include most cream products) in the lowest class. Under the Southern Illinois and Central Illinois orders, on the other hand, 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.

The principal cooperatives proposed that all seven orders classify all ending inventories of fluid milk products in Class III. They claimed that this procedure would be less complicated for handlers since handlers only occasionally would have any adjustment in their pool obligation as a result of having Class III inventories reclassified the following month in Class I. Proponents stated that with packaged inventories in Class I, as under the Central Illinois and Southern Illinois orders, each handler usually has some adjustment each month in his obligation for Class I inventories. The cooperatives' proposed classification of ending inventories 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. It was concluded in the initial recommended decision that the differences among these orders in classifying ending inventories of fluid milk products should be resolved in favor of the procedure now used under the Southern Illinois and Central Illinois orders (i.e., packaged inventory in Class I and bulk inventory in Class III). It is recognized, however, that either type of inventory 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, as expressed both at the hearing and in producers' and handlers' exceptions, 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 allocation 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.

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, five 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 Southern Illinois and Central Illinois 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 two 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) *Shrinkage allowances.* The classification of shrinkage under each order should be changed only to the extent necessary to achieve uniformity among the seven orders in the application of certain shrinkage provisions.

A cooperative association proposed that any plant losses experienced by a handler be classified as Class I milk. Currently, a handler is permitted to have a certain amount of shrinkage classified in Class II. In conjunction with the shrinkage proposal, this producer group also proposed that no exception to the Class I classification of fluid milk products disposed of on routes be made for route returns. Presently, the orders permit route returns that are disposed of for animal feed or dumped to be classified in Class II.

The cooperative proposed that in lieu of the Class II shrinkage and route return allowances a handler be given a credit on his pool obligation of 2

cents per hundredweight for all milk, skim milk, and cream handled in bulk form in his plant. To maintain the present relationship in the proration of shrinkage between the receiving and processing operations, the cooperative proposed that a handler be allowed 0.5-cent per hundredweight for receiving and 1.5 cents per hundredweight for processing, or a total of 2 cents if the handler performed both operations.

While urging that the classification provisions of the seven orders be made as uniform as possible, the principal cooperatives proposed that no change be made at this time in the shrinkage provisions of the orders.

Other than to make them uniform in several respects, no basic change should be made at this time in the shrinkage provisions of the seven orders, or in the arrangement for classifying route returns. Although there may be some merit in revising these provisions to a greater extent than is set forth herein, such changes should be based on a thorough exploration of the issue at a hearing after adequate public notice. These conditions were not met at this hearing.

Each of the orders now provides that with respect to a handler's shrinkage of milk that is received at his pool plant directly from producers, up to 2 percent of such receipts may be classified as Class II milk, the lowest utilization. Should the handler transfer some of the producer milk to another pool plant for processing, the Class II shrinkage which the handler may claim on such milk is limited to 0.5 percent of the milk.

This division of shrinkage between the receiving handler and the processing handler also applies under those orders which provide for a cooperative association to be the handler on bulk tank milk which it receives at the farm and delivers to a pool plant. If, in this case, the plant operator purchases such milk on the basis of scale weights, the maximum Class II shrinkage allowance for the plant operator is 1.5 percent of such milk. The cooperative, as the receiving handler, is the responsible handler for any difference between the farm weights and butterfat tests and the weight and test at which the plant operator purchases the milk. Of this difference, up to 0.5 percent of the milk at farm weights is allowed the cooperative as Class II shrinkage. If the plant operator purchases the milk on the basis of farm weights and tests, however, he is permitted the full 2 percent Class II shrinkage allowance.

With respect to producer milk diverted from a pool plant to a nonpool plant or, under certain of the orders, to another pool plant, either by a plant operator or by a cooperative association, the shrinkage allowances under the present orders are not consistent in all cases with the shrinkage classification outlined above. There is little, if any, reason for applying shrinkage allowances differently under the several orders under comparable handling arrangements. The shrinkage provisions of these orders should be modified to the extent necessary to make them generally uniform with respect to the same handling arrangements.

In this regard, each order should provide that in the case of milk diverted to a nonpool plant or, if permitted, to another pool plant, the diverting handler shall be allowed up to 0.5 percent Class III shrinkage on the milk if it is not purchased by the operator of the plant where the milk is physically received on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples. Where such diversions are to a pool plant, the operator of the plant to which the milk is diverted should be permitted in this case up to 1.5 percent Classs III shrinkage. If the operator of the non-pool plant or pool plant purchases such milk on the basis of farm weights and tests, no shrinkage allowance on the milk should be permitted the diverting handler. In the case of the operator of the pool plant where the milk is physically received, such operator should receive the full 2 percent allowance.

The orders now provide for a method of prorating total plant shrinkage to (1) those receipts of bulk fluid milk products that are generally intended for Class I use, and on which Class III shrinkage limitations apply, and (2) certain other types of receipts generally intended for manufacturing use, such as milk from other order plants or unregulated supply plants for which a Class II or Class III classification is requested. To the extent that the quantity of shrinkage prorated to the first category exceeds the amount permitted a Class III classification, the excess is classified as Class I milk.

Although the revised recommended decision did not provide for the inclusion of receipts of fluid cream products in the second category of receipts just referred to, it is concluded that such receipts should be so included. As pointed out in exceptions, failure to include cream in this second category of receipts would result in a greater portion of the total plant shrinkage, which would include that associated with the cream, being prorated to those receipts intended primarily for Class I use, even though the cream presumably would be received for a Class II or Class III use. Because of the Class III shrinkage limitation, such proration could result in an unwarranted amount of plant shrinkage being classified as Class I milk.

As provided herein, a pool plant operator who transfers fluid milk products in bulk to another plant would have his shrinkage allowance reduced at the rate of 1.5 percent of the quantity transferred. Under the revised recommended decision, such reduction would have applied only in the case of bulk milk that might be transferred. As pointed out in exceptions, this would result in an unwarranted pyramiding of allowable Class III shrinkage on any transfers between pool plants in the form of skim milk. The orders now provide that in the case of such transfers the transferor-handler be allowed 0.5 percent Class III shrinkage while the transferee-handler is permitted up to 1.5 percent Class III shrinkage on the skim milk received. It is reasonable that this limit on the total allowable Class III shrinkage on the skim milk involved be continued.

(f) *Allocation of receipts to utilization.* In adopting a revised classification plan under each of the seven 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. Such changes are necessary to provide for the allocation of receipts to three classes of utilization rather than two classes as at present.

In this connection, 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 that are not fluid milk products or fluid cream products (such as nonfat dry milk and condensed milk or skim milk).

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.

The principal 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. It was their contention that producer milk not used in Class I should receive the next highest possible classification since the milk was produced for the Class I market and represents the reserve supply for this segment of the dairy industry.

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.

In keeping with the goal of classifying milk uniformly under the orders, certain changes should be made to effect a generally uniform application of the allocation provisions to multiple-plant handlers. Presently, the seven 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.

Except in the case of the Chicago Regional 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 the Indiana and Louisville-Lexington-Evansville orders. The St. Louis-Ozarks, Central Illinois, and Southern Illinois orders also provide that allocation shall be on an individual plant basis. The three orders provide, however, that if there are receipts of other source milk at any one of the plants that are to be prorated with producer milk to the plant's Class I utilization, all allocations of the handler's receipts to utilization shall be done on the basis of his total system. The Chicago Regional order provides for system allocation unless a handler requests that allocation be on an individual plant basis and he has no other source milk to be allocated pro rata with producer milk. The Paducah order requires that allocation be on a system basis in all cases.

Conditions in most of these 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 in a generally uniform manner will reduce unnecessary regulatory differences being experienced by these handlers.

There would be little, if any, difference in a handler's total obligation under the order, or in producer returns, from allocating receipts on either an individual-plant basis or a system basis. The latter procedure was proposed in the initial recommended decision. Such procedure required, however, rather extensive modification of the location adjustment provisions in all orders except the Chicago Regional order. With system allocation, it was considered necessary that rules for determining the quantity of producer milk eligible for Class I location adjustment be explicitly stated in each order. Such extensive changes can be avoided, however, with the use of individual-plant allocation, as adopted herein. The Chicago Regional order need not be changed in this respect since it now adequately provides for the determination of location adjustments on producer milk.

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, 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 Indiana and Louisville-Lexington-Evansville orders that use individual-plant allocation. Such provisions are revised, however, to incorporate three classes of utilization rather than two classes.

The additional allocation steps establish a procedure whereby the milk from unregulated supply plants and other order plants will continue to be classified on the basis of the handler's total system, but will be assigned to classes at the pool plant of actual receipt. Under this procedure, the situation may arise where there is not enough utilization in a specific class at the plant of actual receipt to which such other source milk must be assigned (as determined from receipts and utilization of his entire system). In this case, an accounting technique is used for increasing the utilization in such class at the plant of actual receipt and making a corresponding reduction in the same class at one or more of his other pool plants in his system. This technique does not result, however, in changing the amount of milk to be accounted for at each plant, or the classification of milk within the handler's entire system.

The provisions in the attached orders concerning this allocation procedure reflect certain minor changes from the provisions set forth in the revised recommended decision. Such changes are intended to make the accounting technique for "adjusting" utilization at plants within a handler's system comparable to the adjustment technique now used under the two orders listed above that provide for individual-plant allocation and at the sam etime compatible with the establishment of a new intermediate price class for producer milk.

(g) *Obligations relative to other source milk.* As indicated earlier in this decision, it is proposed herein that each of the orders be clarified with respect to the classification of milk that is transferred or diverted from a pool plant to a nonpool plant not regulated under any order, particularly when the nonpool plant also has receipts of milk from plants regulated under other Federal orders. In conjunction with these changes, other revisions should be made to assure that handlers are not assessed a "double charge" on Class I other source milk from such nonpool plants for which

a Class I charge already has been assessed under some Federal order. Under the present orders, such a charge could result in the following manner.

Producer milk could be transferred in bulk from a pool plant under the Indiana order 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 Southern Illinois 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 Southern Illinois 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 Indiana market as Class I milk, the Class I other source milk received at the Southern Illinois 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 Southern Illinois plant, in this example, will have no obligation to the pool on such other source Class I milk. This is achieved through a revision of the allocation provisions and the procedure for computing the pool obligation of a pool plant operator. Receipts of packaged fluid milk products at a pool plant from an unregulated supply plant would be allocated to the pool plant's Class I utilization to the extent that an equivalent amount of skim milk or butterfat disposed of to the unregulated plant by handlers fully regulated under any Federal order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order. This allocation would be made prior to any other allocation of receipts to the plant's Class I utilization, and no order obligation would apply to the milk so allocated to Class I. In the case of fluid milk products received from an unregulated supply plant in bulk form, the provisions setting forth a handler's pool obligation would specify that no payment would apply to any of such milk allocated to Class I if, as just described for packaged milk, an equivalent amount of milk received at the unregulated plant had been priced as Class I milk under some order.

In this same connection, the provisions in each order prescribing the obligation of a partially regulated distributing plant should be changed. 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 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 (uniform price in the case of the Chicago Regional order). 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 to the Class I price adjustment.

In his testimony on how to implement certain classification proposals, a witness for a cooperative association indicated that such a limitation on the Class I price adjustment should be provided. Although the producers' proposals are not being implemented in the manner envisioned by this witness, the problem raised concerning the applicable location adjustment nevertheless should be dealt with.

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. It is unreasonable to expect that such a handler credit should apply on the other source milk.

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 of the seven orders 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.

Presently, the Class I butterfat differential under these orders is the Chicago butter price for the preceding month multiplied by 0.120. The Class II butterfat differential is the Chicago butter price for the current month times the

factor listed for the respective market: Chicago Regional and Louisville-Lexington-Evansville, 0.120; Central Illinois, Southern Illinois, and St. Louis-Ozarks, 0.115; Indiana, 0.113; and Paducah, 0.115 during the months of August–March and 0.110 during the months of April–July.

The "butter price" used to compute the butterfat differentials for Class I and Class II milk is the simple average, as computed by the market administrator, of the daily wholesale selling prices (using the midpoint of any price range as one price) per pound of Grade A (92-score) bulk creamery butter at Chicago as reported during the month by the U.S. Department of Agriculture. This butter price would continue to be used under the revised orders.

The butterfat differential applicable to the uniform price to producers under each of the seven orders except Paducah is derived from the weighted average of the values of Class I and Class II butterfat. It is computed each month by multiplying the total pounds of butterfat in the producer milk allocated to each class by the respective butterfat differential for each class, dividing the sum of such values by the total pounds of butterfat in producer milk, and rounding the result to the nearest one-tenth cent. The butterfat differential to producers under the Paducah order 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.

The principal cooperative associations proposed that all class and uniform prices be subject to adjustment by a single butterfat differential based upon the Chicago butter price times a factor of 0.115. Handler opposition to the proposal was limited largely to the proposed decrease in the Class I butterfat differential that would result.

Lowering the Class I butterfat differential factor from 0.120 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 1969, the average butterfat test for such products in 60 markets was 3.32 percent. Comparable data for the seven subject markets as they are presently constituted are not available. On the basis of information compiled for much of the area now regulated by the seven orders, however, there is every indication that the use of butterfat in Class I in each of the seven markets is following the national trend.[4]

It is estimated that under the adopted classification plan the average butterfat test of Class I products in the seven markets would have ranged from 2.7 percent to 3.2 percent in 1969. On this basis, the effect of changing the Class I butterfat differential factor from 0.120 to 0.115 would be to increase the average Class I price at test by less than 3 cents per hundredweight. The effect upon the average handler's cost for skim milk would be an increase of 10.5 cents per hundredweight.

Using a single factor of 0.115 for computing the Class II and Class III butterfat differentials will result in a uniform adjustment of class prices of 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 and identical Class II and Class III prices for the seven orders. For example, if skim milk used to produce cottage cheese is to be priced uniformly among these markets, the same butterfat differential must apply under each order to such skim milk.

With the use of the same factor in computing the butterfat differential for each class, there appears to be no need for announcing more than one butterfat differential under each order, or for doing so before the end of the month in which it applies. Accordingly, under the new pricing arrangement, the single butterfat differential for the current month should be based on butter prices for such month and should be announced by the fifth day of the following month.

In the case of the butterfat differentials for each class, this announcement procedure represents a change only in the pricing of Class I milk. The Class I butterfat differentials under these orders are now based on butter prices prevailing during the preceding month and are announced by the fifth day of the current month. Such advance announcement of the Class I butterfat differential does not appear necessary, however. The average monthly butter price normally changes very little from month to month, and changes that do occur usually result in relatively limited changes in the butterfat differentials. Each change in the price of butter may be readily noted by handlers by following the daily butter quotations. In the absence of regulation, such information would be the best available for determining trends in butter prices and should be adequate for this purpose under regulation.

As indicated, cooperatives proposed that the butterfat differential used in adjusting pay prices to producers be computed in the same manner as adopted herein for computing handler butterfat differentials. Producer butterfat differentials under six of the seven orders now reflect the weighted value of butterfat in the class uses. Inasmuch as producers favor this method of reflecting skim milk and butterfat values in their pay prices, this pricing arrangement should be extended to the Paducah order. Since the same butterfat differential would be used in adjusting each of the class prices, there is no actual need, of course, for any provision in these orders for weighting the values of butterfat in the three classes in determining the producer butterfat differential.

Under the concept that all class prices should be adjusted by the same butterfat differential, it is necessary that each order provide only for a producer butterfat differential. Although the initial recommended decision provided for handler butterfat differentials, no such differentials for adjusting class prices need be set forth as such in the orders, nor is there any need for pooling the value of butterfat in each class. All producer "differential" butterfat received by handlers would be priced the same to all handlers regardless of the class in which the butterfat is used.

There is no reason for handlers to be less aware under this procedure of what their cost of milk is in each class than under the present order provisions, as was suggested in exceptions to the revised recommended decision. Any adjustment of class prices that a handler may wish to make to reflect a certain butterfat content can be done merely by using the butterfat differential used to adjust pay prices to producers. The procedure adopted herein for not pooling butterfat values is not unique to the Federal order program. The procedure has been in use for some time in a number of other Federal orders, apparently with general acceptance by affected parties in those markets.

It is recognized that the basic formula price of these seven 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 in all orders.

6. *Advance announcement of prices for surplus milk.* The proposals by handlers to announce order prices for surplus milk at the beginning of the month rather than at the end of the month in which the prices apply, or to use bracketed pricing, should not be adopted.

Under the present two-class orders, the Class II price is announced by either the fifth or the sixth day of each month. This price applies to producer milk delivered to handlers during the preceding month. The present Class II prices are based on prices paid to farmers in Minnesota and Wisconsin for manufacturing grade milk. The average Minnesota-Wisconsin price for a particular month is announced by the Department shortly after the end of such month. The current procedure for announcing the Class II price after the end of the month thus permits such price to reflect the corresponding manufacturing milk pay prices for the same month.

The national associations of fluid milk and ice cream processors proposed

[4] Official notice is taken of the annual summaries for 1960 and 1969 of Federal Milk Order Market Statistics which were issued by the Dairy Division, Consumer and Marketing Service, U.S. Department of Agriculture, Washington, D.C.

at the hearing that the class prices to be applicable in a particular month to surplus milk be announced at least by the fifth day of such month, and preferably before the beginning of the month. Such prices necessarily would reflect the prices paid for manufacturing grade milk in the preceding month.

Another group of handlers proposed at the hearing that the Class II price for the current month be based on the Class III price for the preceding month. The group indicated, though, that if the Class II price is based instead on the current basic formula price the Class II price should increase or decrease only in 12-cent increments.

Handlers maintained that under the present announcement procedure they are often disadvantaged by not knowing the cost 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.

The proposal as it concerned the announcement of the price for the proposed Class III classification was opposed by the principal cooperatives. They claimed that for handlers manufacturing the principal surplus products the Class III price should correspond as closely as possible with the prices being paid for manufacturing grade milk in the same month.

In exceptions filed to the revised recommended decision, there was a general concensus among both handler and producer groups that the present method of announcing surplus prices should continue with respect to the Class III price. These groups generally urged, however, that the Class II price for the month be announced by the fifth day of the month and be based on the Minnesota-Wisconsin price for the preceding month.

For the regulated handler processing producer milk into butter, nonfat dry milk and cheddar cheese, advance announcement of the applicable class price could place him at a competitive disadvantage on his sales of these manufactured products. The pay prices for manufacturing grade milk in Minnesota and Wisconsin are closely related to the market values of cheddar cheese, nonfat dry milk and butter, the principal uses for such 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 and 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.

Substantial quantities of milk are disposed of by regulated handlers in the seven markets in the form of butter, nonfat dry milk and cheese. In 1969, over 2 billion pounds of milk, or 57 percent of the total Class II use, were so disposed of by handlers in the Chicago Regional market. Southern Illinois handlers used 56 percent, or nearly 236 million pounds, of that market's total Class II milk that year in manufacturing these products. Although lesser quantities of milk were used in such products in the other five markets, such uses still represented 25 percent or more of the total Class II use for each market. Thus, handlers in the seven 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 for manufacturing grade milk if these handlers are to be competitive in the sale of the principal surplus products. Basing the Class III price for a particular month on the prices paid for manufacturing grade milk in the preceding month would not result in the price coordination necessary for those regulated handlers heavily engaged in the production of cheddar cheese, nonfat dry milk or butter.

The same considerations are involved in the case of an advance announcement of prices for milk used in the proposed Class II products, or in the case of bracketed pricing for such milk. 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 prices for Class III milk.

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.

A handler presented a motion at the hearing that proposals for establishing a new intermediate price class (Class II) be rejected and denied. The motion was presented for inclusion in the hearing record; a ruling by the presiding officer was not requested.

The motion, as restated in the handler's brief is as follows: "That the proposals for such intermediate classification should be rejected and denied, for the reasons that said proposals and the related Order provisions proposed would result in discriminatory regulation, capricious regulation, arbitrary regulation, special legislation and class legislation; would constitute the practice of classification among parties and the selection of regulated parties on an unnatural and unreasonable basis; and would, therefore, be unlawful if adopted."

The statutory authority for Federal milk orders specifies that an order shall classify milk purchased by regulated handlers from producers or associations of producers in accordance with the form in which or the purpose for which the milk is used. Such authority does not limit the number of use classes that may be established. The evidence of this record supports the adoption of three classes of utilization for producer milk under the seven subject orders.

As previously found, producers would represent in most circumstances the most economical source of milk for use in the intermediate-priced (Class II) milk uses. Nevertheless, handlers would not be precluded under the terms of each order from obtaining from alternative sources nonfluid other source milk for Class II use. As adopted herein, such alternative supplies could be allocated directly to such uses and no pool obligation would apply to such other source milk.

Under these circumstances, there is no basis for rejecting and denying the proposal by producers for three classes of utilization. The motion to do so is denied.

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 proposed marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

Rulings on Exceptions

In arriving at the findings and conclusions, and the regulatory provisions of this decision, each of the exceptions

received was carefully and fully considered in conjunction with the record evidence. To the extent that the findings and conclusions, and the regulatory provisions of this decision are at variance with any of the exceptions, such exceptions are hereby overruled for the reasons previously stated in this decision.

MARKETING AGREEMENT AND ORDER

Annexed hereto and made a part hereof are two documents, a MARKETING AGREEMENT regulating the handling of milk, and an ORDER amending the orders regulating the handling of milk in the aforesaid marketing areas which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered, That this entire decision, except the attached marketing agreement, be published in the FEDERAL REGISTER. The regulatory provisions of the marketing agreement are identical with those contained in the orders as hereby proposed to be amended by the attached order which is published in this decision.

DETERMINATION OF PRODUCER APPROVAL AND REPRESENTATIVE PERIOD

December 1973 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the orders, as amended and as hereby proposed to be amended, regulating the handling of milk in the aforesaid marketing areas is approved or favored by producers, as defined under the terms of each of the orders, as amended and as hereby proposed to be amended, and who, during such representative period, were engaged in the production of milk for sale within the respective marketing areas.

Signed at Washington, D.C., on February 19, 1974.

CLAYTON YEUTTER,
Assistant Secretary.

Order [1] amending the orders regulating the handling of milk in certain specified marketing areas.

FINDINGS AND DETERMINATIONS

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

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

(a) *Findings.* A public hearing was held upon certain proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the aforesaid marketing areas. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure (7 CFR Part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area, and the minimum prices specified in the order as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

Order relative to handling. It is therefore ordered that on and after the effective date hereof the handling of milk in each of the specified marketing areas shall be in conformity to and in compliance with the terms and conditions of each of the orders, as amended, and as hereby amended, as follows:

The provisions of the proposed marketing agreement and order amending each of the specified orders contained in the revised recommended decision issued by the Administrator on August 27, 1973, and published in the FEDERAL REGISTER on September 14, 1973 (38 FR 25756) shall be and are the terms and provisions of this order, amending the orders, and are set forth in full herein, subject to the following modifications:

1. The following sections of each order have been changed:

§§ 1030.12(b); 1030.14(a); 1030.15(a)(2); 1030.40(b)(4) and (c)(1); 1030.41(a)(2) and (b)(7); and 1030.44(a)(8), (11), and (12); 1032.12(b); 1032.14(a); 1032.15(a)(2); 1032.40(b)(4) and (c)(1); 1032.41(a)(2) and (b)(7); and 1032.44(a)(8), (11), and (12); 1046.12(b); 1046.14(a); 1046.15(a)(2); 1046.40(b)(4) and (c)(1); 1046.41(a)(2) and (b)(7); and 1046.44(a)(8), (11), and (12); 1049.12(b); 1049.14(a); 1049.15(a)(2); 1049.40(b)(4) and (c)(1); 1049.41(a)(2) and (b)(7); and 1049.44(a)(8), (11), and (12); 1050.12(b); 1050.14(a); 1050.15(a)(2); 1050.40(b)(4) and (c)(1); 1050.41(a)(2) and (b)(7); and 1050.44(a)(8), (11), and (12); 1062.12(b); 1062.14(a); 1062.15(a)(2); 1062.40(b)(4) and (c)(1); 1062.41(a)(2) and (b)(7); and 1062.44(a)(8), (11), and (12); 1099.12(b); 1099.14(a); 1099.15(a)(2); 1099.40(b)(4) and (c)(1); 1099.41(a)(2) and (b)(7); and 1099.44(a)(8), (11), and (12).

2. Changes are made in the Chicago Regional and Central Illinois orders to incorporate amendments, based on separate hearing records, that have been issued since the issuance of the revised recommended decision in this proceeding.

PART 1030—MILK IN CHICAGO REGIONAL MARKETING AREA

Subpart—Order Regulating Handling

GENERAL PROVISIONS

Sec.
1030.1 General provisions.

DEFINITIONS

1030.2 Chicago Regional marketing area.
1030.3 Route disposition.
1030.4 Plant.
1030.5 Distributing plant.
1030.6 Supply plant.
1030.7 Pool plant.
1030.8 Nonpool plant.
1030.9 Handler.
1030.10 Producer-handler.
1030.11 [Reserved]
1030.12 Producer.
1030.13 Producer milk.
1030.14 Other source milk.
1030.15 Fluid milk product.
1030.16 Fluid cream product.
1030.17 Filled milk.
1030.18 Cooperative association.
1030.19 Exempt milk.

HANDLER REPORTS

1030.30 Reports of receipts and utilization.
1030.31 Payroll reports.
1030.32 Other reports.

CLASSIFICATION OF MILK

1030.40 Classes of utilization.
1030.41 Shrinkage.
1030.42 Classification of transfers and diversions.
1030.43 General classification rules.
1030.44 Classification of producer milk.
1030.45 Market administrator's reports and announcements concerning classification.

CLASS PRICES

1030.50 Class prices.
1030.51 Basic formula price.
1030.52 Plant location adjustments for handlers.
1030.53 Announcement of class prices.
1030.54 Equivalent price.

UNIFORM PRICE

1030.60 Handler's value of milk for computing uniform price.
1030.61 Computation of uniform price.
1030.62 Announcement of uniform price and butterfat differential.

PAYMENTS FOR MILK

1030.70 Producer-settlement fund.
1030.71 Payments to the producer-settlement fund.
1030.72 Payments from the producer-settlement fund.
1030.73 Payments to producers and to cooperative associations.
1030.74 Butterfat differential.
1030.75 Plant location adjustments for producers and on nonpool milk.
1030.76 Payments by handler operating a partially regulated distributing plant.
1030.77 Adjustment of accounts.
1030.78 Charges on overdue accounts.

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

1030.85 Assessment for order administration.
1030.86 Deduction for marketing services.

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

GENERAL PROVISIONS

§ 1030.1 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

§ 1030.2 Chicago Regional marketing area.

"Chicago Regional marketing area," hereinafter called the "marketing area," means the territory within the boundaries of the following places, including piers, docks, and wharves and territory wholly or partly within such boundaries occupied by government (municipal, State, or Federal) reservations, installations, institutions or other similar establishments:

(a) In the State of Illinois:

(1) The counties of:

Boone.	Kendall.
Carroll.	Lake.
Cook.	Lee.
De Kalb.	McHenry.
Du Page.	Ogle.
Jo Daviess (except the city of East Dubuque).	Stephenson.
	Will.
	Winnebago.
Kane.	

(2) In Whiteside County:

(i) The townships of:

Caloma.	Jordan.
Hahnaman.	Montmorency.
Hopkins.	Sterling.
Hume.	Tampico.

(b) In the State of Wisconsin:

(1) The counties of:

Adams.	Menominee.
Brown.	Milwaukee.
Calumet.	Monroe.
Columbia.	Oconto.
Crawford.	Oneida.
Dane.	Outagamie.
Dodge.	Ozaukee.
Fond du Lac.	Portage.
Forest.	Racine.
Grant.	Richland.
Green.	Rock.
Green Lake.	Sauk.
Iowa.	Shawano.
Jefferson.	Sheboygan.
Juneau.	Vernon.
Kenosha.	Vilas.
Kewaunee.	Walworth.
La Crosse.	Washington.
Lafayette.	Waukesha.
Langlade.	Waupaca.
Lincoln.	Waushara.
Manitowoc.	Winnebago.
Marquette.	

(2) In Door County the city of Sturgeon Bay;

(3) In Marathon County:

(i) The towns of:

Bergen.	Marathon.
Berlin.	Mosinee.
Bevent.	Norrie.
Easton.	Plover.
Elderon.	Reid.
Franzen.	Rib Mountain.
Guenther.	Ringle.
Harrison.	Stettin.
Hewitt.	Texas.
Knowlton.	Wausau.
Kronenwetter.	Weston.
Maine.	

(ii) The villages of:

Brokaw.	Marathon.
Elderon.	Rothschild.
Hatley.	

(iii) The cities of:

Mosinee.	Wausau.
Schofield.	

(4) In Wood County:

(i) The towns of:

Cranmoor.	Rudolph.
Grand Rapids.	Saratoga.
Port Edwards.	Seneca.

(ii) The villages of:

Biron.	Port Edwards.

(iii) The cities of:

Nekoosa.	Wisconsin Rapids.

§ 1030.3 Route disposition.

"Route disposition" means a delivery (including disposition from a retail plant store) of any fluid milk product classified as Class I milk to a retail or wholesale outlet other than a milk plant. Disposition of a plant through a vendor or through a distribution point shall be considered a route delivery at the location of the wholesale or retail outlet to which delivery is made.

§ 1030.4 Plant.

"Plant" means a building together with its facilities and equipment, whether owned or operated by one or more persons constituting a single operating unit or establishment: (a) that has facilities adequate for cleansing tank trucks, is approved by an appropriate health authority, and at which mjlk moved from the farm is transferred and commingled in another tank truck with other milk and is transshipped in such other tank truck to another plant, (b) at which milk is received from dairy farmers, or (c) at which milk is processed and packaged or manufactured. If a portion of the building is not approved by any health authority for the receiving, processing, or packaging of any fluid milk product for Grade A disposition and is physically separated from the approved portion, such unapproved portion shall not be considered as meeting the terms of this definition.

§ 1030.5 Distributing plant.

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

§ 1030.6 Supply plant.

"Supply plant" means a plant from which a Grade A fluid milk product is shipped or transshipped during the month to another plant. Such supply plant shall be equipped with storage capacity sufficient to hold the largest quantity of fluid milk product either received in the plant or shipped from the plant as a single load during the month, except that no storage capacity shall be maintained in a plant described in § 1030.4(a). Any plant located on the premises of a pool distributing plant pursuant to § 1030.7(a) shall not be considered a supply plant unless it is located in a building that is entirely separate from the distributing plant.

§ 1030.7 Pool plant.

Except as provided in paragraph (d) of this section, "pool plant" means a plant pursuant to § 1030.4 that is specified in paragraph (a), (b), or (c) of this section. In determining the pool plant qualifications of plants pursuant to this section on milk subject to the conditions specified in § 1030.9(h), the receipts and disposition of the plant operated by the transferor-handler shall exclude the milk described in § 1030.9(h)(3) but shall include the milk described in §1030.9(h)(4).

(a) A distributing plant from which there is disposed of during the month not less than the percentages set forth in paragraph (a) (2) and (3) of this section of the receipts specified in paragraph (a)(1) of this section. Two or more distributing plants of a handler shall be considered a unit for the purpose of paragraph (a)(3) of this section in any month if the handler operating such plants has filed a written request with the market administrator prior to such month requesting that they be considered a unit.

(1) The total Grade A fluid milk products, except filled milk, received during the month at such plant, including producer milk diverted under § 1030.13, and milk received from a handler pursuant to § 1030.9(h), but excluding receipts of fluid milk products in exempt milk, packaged fluid milk products and bulk fluid milk products by agreement for Class II and Class III uses from other pool distributing plants, and receipts from other order plants and unregulated supply plants which are assigned pursuant to § 1030.44 (a)(8)(i)(*a*) and (ii) and the corresponding step of § 1030.44(b).

(2) Not less than 10 percent of such receipts is disposed of from such plant in the marketing area in the form of packaged fluid milk products, except

filled milk, either as route disposition or moved to other plants from which it is disposed of in the marketing area as route disposition. Such disposition is to be exclusive of receipts of packaged fluid milk products from other pool distributing plants.

(3) Not less than 45 percent in each of the months of September, October, November, and December and 35 percent in each of the months of January, February, March, and August, and 30 percent in all other months of such receipts is disposed of in the form of packaged fluid milk products, except filled milk, either as route disposition or moved to other plants. Such disposition is to be exclusive of receipts of packaged fluid milk products from other pool distributing plants.

(b) A supply plant from which the quantity of fluid milk products (except filled milk) and condensed skim milk shipped or transshipped during the month in accordance with paragraph (b) (1) and (2) of this section is not less than the percentages specified in paragraph (b)(4) of this section subject to paragraph (b) (5), (6), (7), and (8) of this section of the volume of Grade A milk received from dairy farmers and handlers described in § 1030.9(c), including producer milk diverted under § 1030.13. Such receipts shall be reduced by the disposition of packaged fluid milk products described in paragraph (b)(3) of this section.

(1) Shipped or transshipped as fluid milk products to and physically unloaded into:

(i) Pool plants pursuant to paragraph (a) of this section to the extent of the quantity determined pursuant to paragraph (b)(5) of this section;

(ii) Plants of producer-handlers; and

(iii) Partially regulated distributing plants and assigned to Class I milk disposed of in the marketing area from such plants pursuant to § 1030.42(d)(2)(ii) (*a*) and (*c*).

(2) Moved as condensed skim milk to pool plants pursuant to paragraph (a) of this section to the extent it is used in a fluid milk product that is disposed of as a fluid milk product (except filled milk). Such use of condensed skim milk shall be prorated over receipts of condensed skim milk from all supply plants.

(3) The receipts of Grade A milk required to be included pursuant to this paragraph shall be reduced by the amount of packaged fluid milk products (except filled milk) that are disposed of from such plant as route disposition or moved to a nonpool plant from which they are disposed of as route disposition outside the marketing area.

(4) Such percentage shall be not less than 40 for each of the months of September, October, and November, and 30 for all other months, except that a plant that was a pool plant pursuant to this paragraph during each of the months of August through December, the percentage shall be not less than 20 for each of the following months of January, February, and March. A plant meeting such requirements for August through March shall be a pool plant for each of the following months of April through July, unless:

(i) The milk received at the plant does not continue to meet the Grade A milk requirements for use in fluid milk products distributed in the marketing area; or

(ii) Written application is filed with the market administrator by the plant operator on or before the first day of any such month (April–July) requesting the plant be designated a nonpool plant for such month and any subsequent month through July, provided it does not otherwise qualify as a pool plant.

(5) For the purpose of determining the percentages specified in paragraph (b)(4) and (7) of this section, the quantity of fluid milk products moved from a supply plant pursuant to paragraph (b)(1)(i) of this section shall be a net quantity assignable at pool distributing plants computed by subtracting from the quantity of fluid milk products received from a supply plant(s), but not to exceed such quantity, the amounts described in paragraph (b)(5) (i) and (ii) of this section (if fluid milk products are received from more than one supply plant, such net quantity assignable shall be prorated among supply plants in accordance with the total receipts from such plants).

(i) The quantity of fluid milk products in the form of bulk milk and skim milk transferred from the pool distributing plant to pool supply plants plus any such bulk shipments to nonpool plants as Class II or Class III milk, other than:

(*a*) Transfers classified pursuant to § 1030.40(b)(3); and

(*b*) Transfers on any Saturday or on New Year's Day, Memorial Day, July 4, Labor Day, Thanksgiving, or Christmas, that no milk is received at the pool distributing plant from a supply plant, in an amount not in excess of 120 percent of the average daily receipts of producer milk pursuant to § 1030.13(a) at the plant during the prior month, less the quantity of producer milk diverted pursuant to § 1030.13(e) on such day. If no producer milk was received in the distributing plant during the prior month, the average daily receipts during the current month shall be used in lieu of the prior month for computing the transfers to be excepted by this subdivision; and

(ii) If milk is diverted from the pool distributing plant on the date of the receipt from the supply plant, the quantity so diverted, except any diversion of milk (not to exceed 3 days' production of any individual producer) made because of an emergency situation such as a breakdown of trucking equipment or hazardous road conditions shall not be subtracted if such emergency is reported to the market administrator.

(6) The percentages specified in paragraph (b)(4) and/or in paragraph (b)(7)(iii) of this section applicable during the months August-March shall be increased or decreased by up to 10 percentage points by the Director of the Dairy Division if he finds such revision is necessary to obtain needed shipments or to prevent uneconomic shipments except that the percentages specified in paragraph (b)(7)(iii) of this section shall not exceed 50 percent of those specified in paragraph (b)(4) of this section. Before making such a finding the Director shall investigate the need for revision either on his own initiative or at the request of interested persons and if his investigation shows that a revision might be appropriate he shall issue a notice stating that revision is being considered and inviting data, views, and arguments with respect to the proposed revision: *Provided*, That if a plant which would not otherwise qualify as a pool plant during the month pursuant to paragraph (b)(4) or (7)(iii) of this section would qualify as a pool plant as a result of this subparagraph, such plant shall be a nonpool plant for such month upon filing by the operator of such plant a written request for nonpool status with the market administrator.

(7) Two or more plants shall be considered a unit for the purpose of this paragraph if the following conditions are met:

(i) The plants included in a unit are owned or fully leased and operated by the handler establishing the unit and such plants shall have been pool plants the month prior to being included in a unit. In the case of plants operated by cooperative associations two or more cooperative associations may establish a unit of designated plants by filing with the market administrator a written contractual agreement obligating each plant of the unit to ship milk as directed by such cooperatives;

(ii) The handler or cooperatives establishing a unit notify the market administrator in writing of the plants to be included therein prior to August 1 of each year and no additional plants shall be added to the unit prior to August 1 of the following year;

(iii) Each plant in a unit ships or transships to plants specified in paragraph (b)(1) of this section the following percentages of its producer milk: 20 in each of the months of September, October, and November; 15 in each of the months of August and December; and 10 in each of the months of January, February, and March. If for any month a plant does not meet the individual plant shipping percentage, that plant shall be excluded from the unit; and

(iv) The notification pursuant to paragraph (b)(7)(ii) of this section shall list the plants in the order in which they shall be excluded from the unit if the minimum shipping requirements are not met, such exclusion to be in sequence beginning with the first plant on the list and continuing until the remaining plants as a unit have met the minimum requirements.

(8) If a handler notifies the market administrator in writing that a plant is unable to meet the requirements set forth herein because of a work stoppage due to a labor dispute between employer and employees, the market administrator, upon verification of the handler's claim, shall not include the receipts and utiliza-

tion of skim milk and butterfat at such plant for those days from the date of notification through the last day of the work stoppage in determining the percentage of skim milk and butterfat shipped pursuant to this paragraph. When the work stoppage includes an entire month, the plant shall be considered to have met the minimum percentage shipping requirements in that month for pool plant status pursuant to this paragraph, but such relief shall not be granted for more than 2 consecutive months.

(c) A plant which is operated by a cooperative association and which is not a pool plant pursuant to paragraph (a) or (b) of this section shall be a pool plant if at least 50 percent of the Grade A milk of producers of such cooperative association is received at pool distributing plants of other handlers during the month and written application for pool plant status is filed with the market administrator on or before the first day of such month.

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

(1) A producer-handler plant or exempt distributing plant; or

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

§ 1030.8 Nonpool plant.

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

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

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

(c) "Partially regulated distributing plant" means a nonpool plant that is not an other order plant, a producer-handler plant, or an exempt distributing 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 not an other order plant, a producer-handler plant, or an exempt distributing plant from which fluid milk products are shipped during the month to a pool plant.

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

§ 1030.9 Handler.

"Handler" means:

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

(b) Any cooperative association with respect to producer milk which it causes to be diverted from a pool plant of another handler pursuant to § 1030.13 for the account of such cooperative association;

(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;

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

(g) Any person in his capacity as a broker negotiating a purchase or sale of fluid milk products or fluid cream products from or to a person described in paragraph (a) or (d) of this section; or

(h) Any person who is a handler operating a pool distributing plant pursuant to paragraph (a) of this section may be the handler on producer milk delivered to pool distributing plants of other handlers, subject to the following conditions:

(1) Prior to the first month he becomes the handler pursuant to this paragraph such handler shall notify the market administrator in writing of his election to do so and he shall provide the name and address of each transferee-pool plant receiving the milk that is subject to the conditions of this paragraph.

(2) All of the producer milk on which he is the handler pursuant to this paragraph shall be considered a transfer from such handler's pool distributing plant to another pool distributing plant for the purposes of classification pursuant to §§ 1030.40 through 1030.45;

(3) If an entire tank truck load of milk is delivered to the pool plant of an other handler, it shall be considered a receipt by the transferor-handler pursuant to this paragraph for pricing purposes pursuant to §§ 1030.50 through 1030.53 and 1030.60 through 1030.77 at the location of the transferee-plant; and

(4) If less than an entire tank truck load of milk is delivered to the pool plant of another handler, a portion of the milk on the tank truck load must be physically received at the transferor-handler's pool distributing plant. Such split load shall be considered a receipt of producer milk at the transferor-handler's plant for pricing purposes pursuant to §§ 1030.50 through 1030.53 and 1030.60 through 1030.77.

§ 1030.10 Producer-handler.

"Producer-handler" means any person who operates a dairy farm and a distributing plant and who has route disposition in the marketing area of only fluid milk products of such person's own production or fluid milk products received from pool plants: *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 products handled (excluding receipts from pool plants) and the operation of the processing and packaging business are the personal enterprise and risk of such person.

§ 1030.11 [Reserved]

§ 1030.12 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 diverted pursuant to § 1030.13.

(b) "Producer" shall not include:

(1) A dairy farmer who is a government and has nonproducer status for the month pursuant to § 1030.19;

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

(3) Any person with respect to milk produced by him which is diverted to a pool plant from an other order plant if the other order designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to § 1030.44(a)(8)(ii) and the corresponding step of § 1030.44(b);

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

(5) A dairy farmer with respect to milk produced by him that is received at a handler's pool plant during the months of January through July if any milk from the same farm was a receipt of producer milk in any "payback" month during the preceding year under an other order that provided for a seasonal incentive payment plan whereby funds previously withheld in the computation of the uniform price to producers were paid back to producers through the uniform price computation in subsequent months of the year.

§ 1030.13 Producer milk.

"Producer milk" means milk produced by producers which is:

(a) Received at a pool plant directly from producers, by being physically unloaded into processing facilities or a storage tank (including another tank truck in the case of a reload facility), and the shrinkage of skim milk and butterfat in milk received from producers' farms which was not unloaded in a pool plant. Such direct receipts from producers shall include the portion of a tank truck load of milk unloaded in a pool plant in the case where a portion of such load was first unloaded at another pool plant or diverted to a nonpool plant. The quantity of milk so received at each such plant shall be prorated over the total quantity of milk picked up at each producer's farm.

(b) Received by a handler pursuant to § 1030.9(h).

(c) Received at a pool plant from a handler described in § 1030.9(c). The utilization value of such milk at class prices shall be included in computing the receiving handler's value of milk pursuant to § 1030.60.

(d) Received by a handler described in § 1030.9(c) to the extent of the shrinkage of skim milk and butterfat received from producers' farms which was not received in a pool plant under paragraph (c) of this section. In applying §§ 1030.52 and 1030.75 such skim milk and butterfat shall be deemed to be received at the location of the pool plant to which delivery is normally made.

(e) Diverted from a pool plant to a nonpool plant that is not a producer-handler plant, subject to the conditions specified in this paragraph. Milk shall be eligible for diversion as producer milk only if the person producing such milk had delivered milk as producer milk to a pool plant prior to the diversion. Milk picked up at a producer's farm in a tank truck, to the extent it is unloaded at a nonpool plant, shall be subject to the conditions specified in this paragraph; and if the tank truck contains milk from more than one producer, the quantity subject to the conditions specified in this paragraph shall be prorated over the total quantity of milk picked up at each producer's farm. In calculating the percentages specified in § 1030.7, milk so diverted shall be considered as received in the pool plant from which diverted. The location price adjustments pursuant to § 1030.75 shall be based on the zone location of the nonpool plant(s) where such milk is physically received, except that in the case of a distributing plant, diverted milk of a producer shall be priced at the location of such plant if during the month not more than 4 days' production of such producer is diverted, or if the diverted milk is part of a tank truck load of milk that exceeds the milk storage capacity of such distributing plant. Diverted milk shall be limited as follows:

(1) Milk of a producer diverted for the account of the operator of a pool plant or a handler described in § 1030.9(b) that during the months of April through December does not exceed the quantity of such producer's milk received in the pool plant from which diverted, and during the months of January, February and March does not exceed 70 percent of such producer's milk received in or diverted from such pool plant: *Provided,* That during the months of April through July such limits shall not apply for a producer who delivered to a pool plant any time during the prior August-December period and subsequently maintained producer status without interruption of more than 30 consecutive days;

(2) To the extent that milk diverted by a cooperative as a handler during any month would result in the plant failing to qualify as a pool plant under § 1030.7 such diverted milk shall not be producer milk; and

(3) Milk of a producer diverted by a handler who fails to report the information required pursuant to § 1030.32(a)(2) shall not be considered producer milk pursuant to this paragraph.

§ 1030.14 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 § 1030.40(b)(1) from any source other than producers, handlers described in § 1030.9(c), or pool plants;

(b) Receipts in packaged form from other plants of products specified in § 1030.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1030.40(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 § 1030.40(b)(1)) for which the handler fails to establish a disposition.

§ 1030.15 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 § 1030.40 (b) or (c)(1) (i) through (v), if it contains by weight at least 80 percent water and 6.5 percent nonfat milk solids and less than 9 percent butterfat and 20 percent total solids.

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

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

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

§ 1030.16 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.

§ 1030.17 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).

§ 1030.18 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.

§ 1030.19 Exempt milk.

"Exempt milk" means milk received at a pool plant in bulk from the dairy farmer who produced it, to the extent of the quantity of any packaged fluid milk products returned to the dairy farmer if:

(a) The dairy farmer is a government which is not engaged in the route disposition of any of the returned products; and

(b) The dairy farmer has, by written notice to the market administrator and the receiving handler, elected nonproducer status for a period of not less than 12 months beginning with the month in which the election was made and continuing for each subsequent month until canceled in writing, and the election is in effect for the current month.

Handler Reports

§ 1030.30 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 (except that if a handler so requests and the request is approved by the market administrator, a single report may be filed), 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 § 1030.9(c);

(3) Receipts of fluid milk products and bulk fluid cream products from pool plants of other handlers (or other pool plants, as applicable), including a separate statement of the net receipts from each supply plant computed pursuant to § 1030.7(b)(5), except that during the months of April through July no such

separate statement need be made if receipts from supply plants are from only plants that were pool plants during the prior months of August through March;

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1030.40(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 § 1030.9(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.

§ 1030.31 Payroll reports.

(a) On or before the 25th day after the end of each month, each handler described in § 1030.9(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 § 1030.76(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.

§ 1030.32 Other reports.

(a) Each handler pursuant to § 1030.9(a), (b), (g), and (h) shall report to the market administrator on or before the 10th day after the end of the month in detail and on forms prescribed by the market administrator as follows:

(1) Each handler pursuant to § 1030.9(g) shall report the quantities of skim milk and butterfat in fluid milk products and fluid cream products moved for his account from each pool plant and received at each pool plant or partially regulated distributing plant during the month;

(2) Each handler pursuant to § 1030.9(a) and (b) shall report for each load of milk diverted for his account the quantity of each producer's milk included therein, the date(s) and times of pickup and delivery to the nonpool plant the name and location of that plant, and the plant from which diverted;

(3) Each handler pursuant to § 1030.9(h) shall report for each load of milk transferred for his account the quantity of each producer's milk included therein, the dates and times of pickup and delivery to the transferee-plant, the name and location of that plant and the plant from which transferred. Also, he shall report the quantities of skim milk and butterfat in his receipts of producer milk and delivery of such milk to each pool distributing plant during the month; and

(4) Each handler who, during the month, received milk from a dairy farmer from whom he had not received milk for at least 30 consecutive days, shall report the name and address of the dairy farmer and the plant to which each such person previously delivered milk. Each handler who discontinues receiving milk from a producer during the month shall report each such producer's name, address, and the plant to which such person transferred.

(b) In addition to the reports required pursuant to paragraph (a) of this section and §§ 1030.30 and 1030.31, 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

§ 1030.40 Classes of utilization.

Except as provided in § 1030.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1030.30 shall be classified as follows:

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

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

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

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

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

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

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

(4) Used to produce:

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

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

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

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

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

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

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

(1) Used to produce:

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

(ii) Butter;

(iii) Any milk product in dry form;

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

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

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

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

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

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

(5) In skim milk in any modified fluid milk product that is in excess of the quantity of skim milk in such product that was included within the fluid milk product definition pursuant to § 1030.15; and

(6) In shrinkage assigned pursuant to § 1030.41(a) to the receipts specified in § 1030.41(a)(2) and in shrinkage specified in § 1030.41 (b) and (c).

§ 1030.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1030.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant (or at all of the handler's pool plants combined if a single report is filed pursuant to § 1030.30) to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraph (b) (1) through (6) of this sec-

tion 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, excluding that received in the form of a packaged 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 § 1030.9(c));

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1030.9(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 (or pool plants of other handlers, if applicable);

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

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

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products transferred to other pool plants (or pool plants of other handlers, if applicable) and to nonpool 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 § 1030.9 (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.

§ 1030.42 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 to the pool plant of another handler if a single report is filed pursuant to § 1030.30 by the transferor-handler) shall be classified as Class I milk unless the operators of both plants request the same classification in another class. 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 § 1030.44(a)(12) and the corresponding step of § 1030.44(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 § 1030.40.

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

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

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

(d) *Transfers and diversions to other nonpool plants.* Skim milk or butterfat transferred or diverted in the following forms from a pool plant to a nonpool plant that is not an other order plant, a producer-handler plant, or an exempt distributing 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 § 1030.30 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 prod-

ucts 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.

§ 1030.43 General classification rules.

In determining the classification of producer milk pursuant to § 1030.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1030.30 and shall compute separately for each pool plant (or for all of a handler's pool plants combined if paragraph (d) of this section applies) and for each cooperative association with respect to milk for which it is the handler pursuant to § 1030.9 (b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1030.40, 1030.41, and 1030.42;

(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 § 1030.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative; and

(d) If a handler operates two or more pool plants, the classification of producer milk shall be determined on the basis of all of his pool plants combined if he files a single report pursuant to § 1030.30 or has received skim milk or butterfat that would be allocated pursuant to § 1030.44 (a) (11) or (12) or the corresponding steps of § 1030.44(b).

§ 1030.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1030.9(a) for each of his pool plants separately (or for all of his pool plants combined if § 1030.43(d) applies) and of each handler described in § 1030.9 (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 § 1030.41(b);

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in:

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

(ii) Receipts of exempt milk;

(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 § 1030.40(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 § 1030.40(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 § 1030.40(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 § 1030.40(b)(1) that was not subtracted pursuant to paragraph (a)(4), (5), and (6) of this section;

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

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

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

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

(vii) Receipts of fluid milk products (other than exempt milk) from a government which has elected nonproducer status for the month pursuant to § 1030.19; and

(viii) Receipts of fluid milk products from persons described in § 1030.12(b)(5);

(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, but not in excess of such quantities, the pounds of skim milk in each of the following;

(i) Receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a) (2) (i) and (7) (v) of this section:

(*a*) For which the handler requests a classification other than Class I; or

(*b*) Which are in excess of the pounds of skim milk determined by multiplying the pounds of skim milk remaining in Class I (excluding any duplication of Class I utilization resulting from reported Class I transfers between pool plants of the handler) by 1.25 and subtracting the sum of the pounds of skim milk in receipts of producer milk, fluid milk products from other pool plants (or from pool plants of other handlers if § 1030.43(d) applies), and bulk fluid milk products from other order plants that were not subtracted pursuant to paragraph (a) (7) (vi) of this section; and

(ii) 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;

(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 § 1030.40(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) Subtract from the pounds of skim milk remaining in each class, pro rata to such quantities in Class I and in Class II and Class III combined (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler), with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, the pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a) (2) (i), (7) (v), and (8) (i) 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;

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

(i) From each class, in series beginning with Class III, the pounds determined by multiplying the pounds of such net receipts by the larger of the percentage of estimated combined Class II and Class III utilization of skim milk announced for the month by the market administrator pursuant to § 1030.45(a) or the percentage that the combined Class II and Class III utilization remaining is of the total remaining utilization of skim milk of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler); and

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

(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 other pool plants (or from pool plants of other handlers if § 1030.43(d) applies) according to the classification of such products pursuant to § 1030.42 (a); and

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

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

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

§ 1030.45 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 § 1030.44(a) (12) and the corresponding step of § 1030.44 (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 § 1030.44 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 17th day after the end of each month, report to each cooperative association, upon request by such association, the percentage of the milk caused to be delivered by the cooperative association for its members which was utilized in each class at each pool plant receiving such milk. For the purpose of this report, the milk so received shall be allocated to each class at each pool plant in the same ratio as all producer milk received at such plant during the month.

CLASS PRICES

§ 1030.50 Class prices.

Subject to the provisions of § 1030.52, 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 $1.26.

(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.

§ 1030.51 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.

§ 1030.52 Plant location adjustments for handlers.

A location adjustment for each handler shall be computed by the market administrator as follows:

(a) The market administrator shall determine the location adjustment rate for each plant at which milk is to be priced under this part on the following basis:

(1) Zone 1—adjustment rate—none. Zone I shall consist of the territory within 40 miles of the city hall in Chicago.

(2) Zone 2—adjustment rate—minus 2 cents per hundredweight of milk. Zone 2 shall consist of the territory beyond Zone 1 but within 55 miles of the city hall in Chicago.

(3) Zone 3—adjustment rate—minus 4 cents per hundredweight of milk. Zone 3 shall consist of the territory beyond Zone 2 but within 70 miles of the city hall in Chicago.

(4) Zone 4—adjustment rate—minus 6 cents per hundredweight of milk. Zone

4 shall consist of the territory beyond Zone 3 but within 85 miles of the city hall in Chicago, plus Milwaukee County, Wis., and Winnebago County, Ill.

(5) For plants located beyond Zone 4 the adjustment rate shall be an additional 2 cents per hundredweight of milk for each 15 miles or fraction thereof over 85 miles. The territory beyond 85 miles, but not to exceed 100 miles, shall be Zone 5 and each successive 15-mile area shall be an additional zone.

(b) (1) The mileages applicable pursuant to this section and § 1030.75 shall be determined by the market administrator on the basis of the shortest highway distance between the handler's plant and the city hall in Chicago.

(2) The market administrator shall notify each handler of the zone or mileage determination.

(3) Mileage shall be subject to redetermination at all times. In the event a handler requests a redetermination of the mileage pertaining to any plant, the market administrator shall notify the handler of his findings within 30 days after the receipt of such request. Any financial obligations resulting from a change in mileage shall not be retroactive for any period prior to the redetermination announced by the market administrator.

(c) A handler who operates a pool distributing plant (or plants) shall receive a location adjustment computed as follows:

(1) Determine the aggregate quantity of Class I milk at such plant (or all pool plants of such handler for which a single report is filed pursuant to § 1030.30 after eliminating duplication for transfer between such plants);

(2) Subtract the receipts of exempt milk and the quantity of packaged fluid milk products received at the handler's pool plant(s) from the pool plants of other handlers (or other pool plants, if applicable) and from nonpool plants if assigned to Class I milk;

(3) Subtract the quantity of bulk fluid milk products shipped from the handler's pool plant(s) to pool plants of other handlers (or other pool plants, if applicable) and to nonpool plants that are classified as Class I;

(4) Subtract the Class I milk packaged by pool supply plants and disposed of as route disposition or to other plants;

(5) Subtract the quantity of bulk fluid milk products received at the handler's pool plant(s) from other order plants and unregulated supply plants that are assigned to Class I pursuant to § 1030.44;

(6) Assign the remaining quantity pro rata to receipts during the month from each source as specified in paragraph (c) (6) (i) and (ii) of this section:

(i) Receipts at the handler's pool distributing plant(s) of producer milk, except that if the quantity prorated to any distributing plant exceeds the Class I disposition from such plant, such quantity shall be reduced to the amount of such Class I disposition and the quantity of milk represented in such reduction shall be prorated to receipts of producer milk at other distributing plants of the handler (limited in each instance to the amount of Class I disposition at each such plant) and receipts of bulk fluid milk products at such distributing plants from other pool plants; and

(ii) Receipts of bulk fluid milk products at such distributing plants from each other pool plant according to the quantity of such receipts from each such source;

(7) If receipts during the month at such distributing plants of producer milk and bulk fluid milk products from other pool plants are less than the quantity to be assigned pursuant to paragraph (c) (6) of this section, prorate the amount of such excess in the same manner over such receipts in the next prior month in which there were receipts in excess of those assigned in that month pursuant to this subparagraph;

(8) Multiply by the location adjustment rates applicable at the transferor plants, the quantity assigned to receipts of producer milk at such distributing plants pursuant to paragraph (c) (6) (i) and (7) of this section;

(9) Multiply by the location adjustment rates applicable at the transferor plants, the lesser of:

(i) 110 percent of the quantities assigned to receipts from each other pool plant pursuant to paragraph (c) (6) (ii) of this section; or

(ii) Receipts specified in paragraph (c) (6) (ii) of this section;

(10) Multiply by the location adjustment rates applicable at the transferor plants, the quantities assigned pursuant to paragraph (c) (7) of this section to receipts from other pool plants in prior months;

(11) Multiply the quantity of bulk fluid milk products shipped from the handler's pool plant(s) to nonpool plants and classified as Class I by the location adjustment rates applicable at the shipping plant;

(12) Multiply the quantity of Class I milk packaged by pool supply plants and disposed of as route disposition or to other plants by the location adjustment rates applicable at the pool supply plants from which disposition is made; and

(13) Add together the minus amounts obtained pursuant to paragraph (c) (8), (9), (10), (11), and (12) of this section.

(d) A handler (other than one described in paragraph (c) of this section) who operates a pool supply plant shall receive a location adjustment credit on producer milk at such plant classified as Class I that is not shipped as a bulk fluid milk product to a pool distributing plant.

(e) The Class I price applicable to other source milk shall be reduced 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.

§ 1030.53 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.

§ 1030.54 Equivalent price.

If for any reason a price quotation or other pricing factor required by this order for computing class prices or for other purposes is not available in the manner described, the market administrator shall use a price quotation or price factor determined by the Secretary to be equivalent to that required.

UNIFORM PRICE

§ 1030.60 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 described in § 1030.9 (a), (b), (c), and (h) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1030.44 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 § 1030.44(a) (14) and the corresponding step of § 1030.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1030.74, 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 § 1030.44 (a) (9) and the corresponding step of § 1030.44(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 § 1030.44(a) (7) (i) through (iv), (vii), and (viii) and the corresponding step of § 1030.44(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 § 1030.44(a) (7) (v) and (vi) and the corresponding step of § 1030.44 (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 § 1030.44(a) (11) and the corresponding step of § 1030.44(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) Subtract an amount equal to the minus location adjustment computed pursuant to § 1030.52(c)(13) or (d).

§ 1030.61 Computation of uniform price.

For each month the market administrator shall compute the uniform price per hundredweight of producer milk of 3.5 percent butterfat content at plants in Zone I pursuant to paragraphs (a) through (e) of this section. If the unreserved cash balance in the producer-settlement fund to be included in the computation is less than 2 cents per hundredweight of producer milk on all reports, the report of any handler who has not made the payments required pursuant to § 1030.71 for the preceding month shall not be included in the computation of the uniform price. The report of such handler shall not be included in the computation for succeeding months until he has made full payment of outstanding monthly obligations. Subject to the aforementioned conditions, the market administrator shall compute the uniform price in the following manner:

(a) Combine into one total the values computed pursuant to § 1030.60 for all handlers;

(b) Add an amount equal to the total value of the minus location adjustments computed pursuant to § 1030.75(a);

(c) Add an amount representing not less than 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 § 1030.60(f); and

(e) Subtract not less than 4 cents nor more than 5 cents per hundredweight.

§ 1030.62 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 14th day after the end of each month the uniform price for such month.

PAYMENTS FOR MILK

§ 1030.70 Producer-settlement fund.

The market administrator shall maintain a separate fund known as the "producer-settlement" fund into which he shall deposit all payments 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 §§ 1030.71, 1030.76, 1030.77 and 1030.78.

(b) Payments due handlers pursuant to §§ 1030.72 and 1030.77: *Provided*, That payments due any handler shall be offset by payments due from such handler pursuant to §§ 1030.71, 1030.76, 1030.77, 1030.78, 1030.85 and 1030.86.

§ 1030.71 Payments to the producer-settlement fund.

(a) On or before the 16th 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 § 1030.60.

(2) The sum of:

(i) The value at the uniform price, as adjusted pursuant to § 1030.75, 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 § 1030.60(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.

§ 1030.72 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 § 1030.71(a)(2) exceeds the amount computed pursuant to § 1030.71(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 become available.

§ 1030.73 Payments to producers and to cooperative associations.

(a) Each handler shall pay each producer for producer milk received from such producer and 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 3rd day after the end of each month, to each producer who has not discontinued shipping milk to such handler before the end of the month, for producer milk received during the first 15 days of the month at a rate per hundredweight not less than the lowest class price under the order for milk of 3.5 percent butterfat for the preceding month, less proper deductions authorized in writing by such producer; and

(2) On or before the 18th day after the end of each month, for producer milk received during such month, at a rate per hundredweight of not less than the uniform price as adjusted pursuant to §§ 1030.74, 1030.75 and 1030.86, less any payment made pursuant to paragraph (a)(1) of this section, and any proper deduction authorized in writing by such producer and plus or minus adjustments for errors in previous payments made to such producer. If by such date the handler has not received full payment from the market administrator pursuant to § 1030.72 for such month, he may reduce pro rata his payments to producers by not more than the amount of such underpayment. Payment to producers shall be completed thereafter not later than the date for making payments pursuant to this paragraph next following receipt of the balance due from the market administrator.

(b) Payments required in paragraph (a) of this section shall be made by a handler to a cooperative association qualified under § 1030.18, or its duly authorized agent, for producer milk if the cooperative association is authorized to collect such payments for such producers and has presented the handler with a written request for such payments. Payments to the cooperative association pursuant to this paragraph shall be subject to the condition that the association has provided the handler with a written promise to reimburse the handler the amount of any actual loss incurred by the handler because of any improper claim on the part of the cooperative association. The amount of payment shall be equal to the sum of the individual payments otherwise payable for such producer milk and shall be paid by the handler as follows:

(1) On or before the 1st day after the end of each month for producer milk received during the first 15 days of the month; and

(2) On or before the 16th day after the end of each month for milk received during such month; and

(c) Each handler shall pay a cooperative association for milk received by the handler from the cooperative association as follows:

(1) In the case of milk received from a pool plant(s) operated by a cooperative association:

(i) For milk received during the first 15 days of the month, the handler shall pay the cooperative association on or before the 1st day after the end of the month during which the milk was re-

ceived at a rate per hundredweight not less than the lowest class price under the order for milk of 3.5 percent butterfat for the preceding month; and

(ii) For milk received during the month the handler shall pay the cooperative association on or before the 16th day after the end of the month during which the milk was received at a rate per hundredweight not less than the minimum class prices pursuant to § 1030.50, as adjusted by the butterfat differential specified in § 1030.74, and less any payment made pursuant to paragraph (c)(1)(i) of this section; and

(2) In the case of milk received from a cooperative association acting as a handler described under § 1030.9(c);

(i) For milk received during the first 15 days of the month, the handler shall pay a cooperative association on or before the 1st day after the end of the month during which the milk was received at a rate per hundredweight not less than the lowest class price under the order for milk of 3.5 percent butterfat for the preceding month; and

(ii) For milk received during the month, the handler shall pay the cooperative association on or before the 16th day after the end of the month during which the milk was received at a rate per hundredweight of not less than the uniform price computed as described under § 1030.61, as adjusted pursuant to §§ 1030.74 and 1030.75 and less any payment made pursuant to paragraph (c)(2)(i) of this section.

(d) In making payments for producer milk pursuant to paragraphs (a)(2) or (b)(2) of this section, each handler shall furnish each producer or cooperative association to whom such payment is made a supporting statement in such form that it may be retained by the recipient which shall show:

(1) The month and identity of the producer;

(2) The daily and total pounds for each producer (and the average butterfat content for the entire month only);

(3) The minimum rate or rates at which payment to the producer is required pursuant to this 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.

§ 1030.74 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.

§ 1030.75 Plant location adjustments for producers and on nonpool milk.

(a) The uniform price pursuant to § 1030.61 for producer milk received at a plant shall be adjusted according to the location of the plant at the rates set forth in § 1030.52(a).

(b) The uniform price applicable to other source milk shall be reduced at the rates set forth in § 1030.52(a), except that the adjusted uniform price shall not be less than the Class III price.

§ 1030.76 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 §§ 1030.30(b) and 1030.31(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 § 1030.60 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 § 1030.60 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 § 1030.60 for such handler shall include, in lieu of the value of other source milk specified in § 1030.60(f) less the value of such other source milk specified in § 1030.71(a)(2)(ii), a value of milk determined pursuant to § 1030.60 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 § 1030.7(b), subject to the following conditions:

(*a*) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1030.30(b) and 1030.31(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 § 1030.60 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 § 1030.74, 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 § 1030.74, 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.

§ 1030.77 Adjustment of accounts.

When verification by the market administrator of reports or payment of any handler discloses errors resulting in monies 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.

§ 1030.78 Charges on overdue accounts.

Any unpaid obligation of a handler pursuant to §§ 1030.71, 1030.76, 1030.77, 1030.85 or 1030.86, shall be increased three-fourths of one percent on the 7th day after the due date each month.

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

(b) For the purpose of this section; any unpaid obligation that is determined at a date later than prescribed by the order because of a handler's failure to submit a report to the market administrator shall be considered to have been due when it would have been due if such report had been submitted at the proper time; and

(c) Payment of any interest obligation computed pursuant to this section in an amount less than $10 shall be delayed until the accumulated interest obligation of such handler equals or exceeds $10.

Administrative Assessment and Marketing Service Deduction

§ 1030.85 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 18th day after the end of each 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 farm production and including for a handler described in § 1030.9(c) producer milk described in § 1030.13(d));

(b) Other source milk allocated to Class I pursuant to § 1030.44(a) (7) and (11) and the corresponding steps of § 1030.44(b), except such other source milk that is excluded from the computations pursuant to § 1030.60 (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 § 1030.76(a)(2).

§ 1030.86 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 § 1030.73 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 18th day after the end of the month. Such monies 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 1032—MILK IN SOUTHERN ILLINOIS MARKETING AREA

Subpart—Order Regulation Handling

General Provisions

Definitions

Handler Reports

Classification of Milk

Class Prices

Uniform Price

Payments for Milk

Administrative Assessment and Marketing Service Deduction

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

General Provisions

§ 1032.1 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

§ 1032.2 Southern Illinois marketing area.

"Southern Illinois marketing area", hereinafter called the "marketing area", means all the territory within the following counties, all of which are in the State of Illinois, together with all municipal corporations therein and all institutions owned or operated by the Federal, State, county, or municipal governments located wholly or partially within such counties:

BASE ZONE

Bond.
Calhoun.
Christian.
Clark.
Clay.
Clinton.
Coles.
Crawford.
Cumberland.
Edwards.
Effingham.
Fayette.
Greene.
Jasper.
Jefferson.
Jersey.
Lawrence.
Macoupin.
Madison.
Marion.
Monroe.
Montgomery.
Richland.
St. Clair (except Scott Military Reservation, East St. Louis, Centreville, Canteen, and Stites Townships and the city of Belleville).
Shelby.
Wabash.
Washington.
Wayne.

NORTHERN ZONE

Champaign.
De Witt.
Douglas.
Edgar.
Logan.
Macon.
McLean.
Menard.
Morgan.
Moultrie.
Piatt.
Sangamon.
Vermilion.

SOUTHERN ZONE

Franklin.
Hamilton.
Jackson.
Perry.
Randolph.
Saline.
White.
Williamson.

§ 1032.3 Route disposition.

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

§ 1032.4 [Reserved]

§ 1032.5 Distributing plant.

"Distributing plant" means any plant at which fluid milk products are processed and packaged and from which there is route disposition of Grade A fluid milk products in the marketing area during the month.

§ 1032.6 Supply plant.

"Supply plant" means any plant at which Grade A milk is received from dairy farmers and from which fluid milk products are moved to a distributing plant.

§ 1032.7 Pool plant.

Except as provided in paragraph (d) of this section, "pool plant" means a plant specified in paragraph (a), (b), or (c) of this section. For purposes of determining pool plant status pursuant to this section, Grade A receipts from dairy farmers shall include all quantities of milk diverted pursuant to § 1032.13(b) (1), (2), and (3) by an operator of a pool plant.

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

(1) Route disposition, except filled milk, in the marketing area equal to 10 percent or more of its Grade A receipts from dairy farmers and handlers described in § 1032.9(c), or an average of not less than 7,000 pounds per day of route disposition, except filled milk, in the marketing area; and

(2) Total route disposition, except filled milk, equal to 50 percent or more of its Grade A receipts from dairy farmers and handlers described in § 1032.9(c) during the months of August through February and 40 percent during all other months.

(b) A supply plant from which during the month an amount equal to 50 percent or more of its receipts of Grade A milk from dairy farmers and handlers described in § 1032.9(c) is moved to and received at a pool plant(s) described in paragraph (a) of this section which have at least 50 percent Class I use (not including filled milk) of the total of such supply plant milk and producer milk receipts in the months of August through February and 40 percent in other months.

(c) Any supply plant which qualified pursuant to paragraph (b) of this section in each of the immediately preceding months of September through January shall be a pool plant for the months of February through August unless the operator of such plant notifies the market administrator in writing before the first day of any such month of his intention to withdraw such plant as a pool plant, in which case such plant shall thereafter be a nonpool plant until it again meets the shipping requirements set forth in paragraph (b) of this section.

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

(1) A producer-handler plant;

(2) A distributing plant qualified pursuant to paragraph (a) of this section which meets the requirements of a fully regulated plant pursuant to the provisions of another order issued pursuant to the Act and from which during the month there is a greater quantity of route disposition, except filled milk, in the marketing area regulated by the other order than in the Southern Illinois marketing area: *Provided*, That such a distributing plant which was a pool plant under this order in the immediately preceding month shall continue to be subject to all of the provisions of this part until the third consecutive month in which a greater proportion of such route disposition is made in such other marketing area, unless the other order requires regulation of the plant without regard to its qualifying as a pool plant under this order subject to the proviso of this subparagraph;

(3) A distributing plant qualified pursuant to paragraph (a) of this section which meets the requirements of a fully regulated plant pursuant to the provisions of another Federal order and from which during the month there is a greater quantity of route disposition, except filled milk, in the Southern Illinois marketing area than in the other marketing area, and such other order which fully regulates the plant does not contain provisions to exempt the plant from regulation even though such plant has greater such route disposition in the marketing area of the Southern Illinois order; and

(4) Any plant qualified pursuant to paragraph (c) of this section for any portion of the period of February through August, inclusive, that the milk at such plant is subject to the classification and pricing provisions of another order issued pursuant to the Act.

§ 1032.8 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 to a pool plant.

§ 1032.9 Handler.

"Handler" means:

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

(b) Any cooperative association with respect to milk of its members diverted for its account pursuant to § 1032.13;

(c) Any cooperative association with respect to the milk of its members which is received from the farm for delivery to the pool plant of another handler in a tank truck owned and operated by, or under contract to such cooperative association. The cooperative association, prior to the first day of the month of delivery, shall notify in writing the market administrator and the handler to whose plant the milk is delivered, that it will be the handler for the milk. For purposes of location adjustments to producers, milk so delivered shall be deemed to have been received by the cooperative association at a pool plant at the location of the pool plant to which it is delivered;

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

(e) A producer-handler;

(f) Any person who operates an other order plant described in § 1032.7(d); and

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

§ 1032.10 Producer-handler.

"Producer-handler" means a person who:

(a) Operates a distributing plant and processes milk from his own farm production and who disposes of all or a portion of such milk as route disposition in the marketing area but who receives no milk from other dairy farmers or fluid milk products from nonpool plants: *Provided*, That the skim milk and butterfat disposed of in the form of fluid milk products designated as Class I milk pursuant to § 1032.40(a) does not exceed the

skim milk and butterfat, respectively, in the form of milk from his own farm production, and in the form of fluid milk products from pool plants of other handlers, allowing for inventory derived from such sources; and

(b) Assumes as his personal enterprise and risk the processing and distribution of fluid milk products and the maintenance, care, and management of dairy animals and other resources necessary to produce his own farm milk production.

§ 1032.11 [Reserved]

§ 1032.12 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 diverted as producer milk pursuant to § 1032.13.

(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 § 1032.44(a)(8)(iii) and the corresponding step of § 1032.44(b); and

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

§ 1032.13 Producer milk.

"Producer milk" means all skim milk and butterfat produced by producers which is:

(a) Received during the month:

(1) At a pool plant from producers or from a handler described in § 1032.9(c); and

(2) By a handler described in § 1032.9(c) but which is not delivered to a pool plant of another handler and constitutes shrinkage pursuant to § 1032.41(c) or Class I shrinkage; or

(b) Diverted by a handler who is the operator of a pool plant or by a cooperative association pursuant to the following conditions:

(1) Milk of a producer diverted from a pool plant for the account of the plant operator to another pool plant(s) for not more days of production of such producer's milk than is physically received at a pool plant(s) from which diverted;

(2) Milk of a producer diverted from a pool plant to a nonpool plant that is not a producer-handler plant or an other order plant, on any day during the months of May, June, and July, during the months of August and December for not more than 12 days of production of producer milk by such producer, and in any other month for not more than 8 days of production of producer milk by such producer;

(3) Milk of a producer diverted during the month from a pool plant to a nonpool plant that is an other order plant, for not more days of production of producer milk, by such producer than is received at a pool plant(s) pursuant to paragraph (a) of this section;

(4) For pricing purposes, milk diverted pursuant to paragraph (b) (2) and (3) of this section shall be deemed to be received by the diverting handler at the location of the plant to which diverted: *Provided*, That milk diverted pursuant to paragraph (b)(2) of this section to a plant located less than 50 miles (by the shortest highway distance as determined by the market administrator) from the pool plant from which diverted, shall be deemed to be received by the diverting handler at the location of the plant from which diverted; and

(5) For pricing purposes, milk diverted pursuant to paragraph (b)(1) of this section shall be deemed to be received by the diverting handler at the location of the plant to which diverted.

§ 1032.14 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 § 1032.40 (b)(1) from any source other than producers, handlers described in § 1032.9(c), or pool plants;

(b) Receipts in packaged form from other plants of products specified in § 1032.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1032.40 (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 § 1032.40(b)(1)) for which the handler fails to establish a disposition.

§ 1032.15 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 § 1032.40(b) or (c)(1) (i) through (v) if it contains by weight at least 80 percent water and 6.5 percent nonfat milk solids and less than 9 percent butterfat and 20 percent total solids.

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

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

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

§ 1032.16 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.

§ 1032.17 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).

§ 1032.18 Cooperative association.

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

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

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

§ 1032.19 Reload point.

"Reload point" means a location at which facilities approved by a duly constituted health authority, only for the transfer of milk from one tank truck to another and for the washing of tank trucks and at which milk moved from the farm in a tank truck is commingled in a tank truck with milk from other tank trucks before entering a milk plant: *Provided*, That reloading facilities on the premises of a plant having equipment for the receiving, cooling, storing, and processing of milk, which equipment is in current use during the month, shall be considered a supply plant rather than a reload point.

HANDLER REPORTS

§ 1032.30 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) Receipts of milk from handlers described in § 1032.9(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 § 1032.40 (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 § 1032.9(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.

§ 1032.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1032.9 (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 § 1032.76(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.

§ 1032.32 Other reports.

In addition to the reports required pursuant to §§ 1032.30 and 1032.31, 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

§ 1032.40 Classes of utilization.

Except as provided in § 1032.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1032.30 shall be classified as follows:

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

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

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

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

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

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

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

(4) Used to produce:

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

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

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

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

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

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

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

(1) Used to produce:

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

(ii) Butter;

(iii) Any milk product in dry form;

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

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

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

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

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

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

(5) In skim milk in any modified fluid milk product that is in excess of the quantity of skim milk in such product that was included within the fluid milk product definition pursuant to § 1032.15; and

(6) In shrinkage assigned pursuant to § 1032.41(a) to the receipts specified in § 1032.41(a)(2) and in shrinkage specified in § 1032.41(b) and (c).

§ 1032.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1032.30, 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 bulk fluid form;

(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 § 1032.9(c));

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1032.9(c) and in milk diverted to such plant from another pool plant, except that, in either case, if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be 2 percent;

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

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

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

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

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products transferred to other plants that is not in excess of the respective amounts of skim milk and butterfat to which percentages are applied in 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 § 1032.9 (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.

§ 1032.42 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 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 § 1032.44(a)(12) and the corresponding step of § 1032.44(b);

(2) If the transferor-plant or divertor-plant received during the month other source milk to be allocated pursuant to § 1032.44(a)(7) or the corresponding step of § 1032.44(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 § 1032.44(a) (11) or (12) or the corresponding steps of § 1032.44(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 § 1032.40.

(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 § 1032.30 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 plans 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.

§ 1032.43 General classification rules.

In determining the classification of producer milk pursuant to § 1032.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1032.30 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 § 1032.9 (b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1032.40, 1032.41, and 1032.42;

(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 § 1032.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1032.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1032.9(a) for each of his pool plants separately and of each handler described in § 1032.9 (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 § 1032.41 (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 § 1032.40(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 § 1032.40(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 § 1032.40(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 § 1032.40(b) (1) that was not subtracted pursuant to paragraph (a) (4), (5), and (6) of this section;

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

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

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

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

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

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

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

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

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

(b) Subtract from the above result the sum of the pounds of skim milk in re-

ceipts 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 § 1032.40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to paragraph (a)(5) and (7)(i) of this section;

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

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

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

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

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

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

(*a*) The estimated utilization of skim milk of all handlers in each class as announced for the month pursuant to § 1032.45(a); or

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

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

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

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

(13) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products and bulk fluid cream products from another pool plant according to the classification of such products pursuant to § 1032.42(a); and

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

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

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

§ 1032.45 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 § 1032.44(a)(12) and the corresponding step of § 1032.44(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 § 1032.44 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 class utilization of producer milk received by each handler from a cooperative association or from members of the association. For the purpose of this report, the milk caused to be so delivered by an association shall be prorated to each class in the proportion that the total receipts of milk received from producers by such handler were used in each class.

CLASS PRICES

§ 1032.50 Class prices.

Subject to the provisions of § 1032.52, 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 Class I price pursuant to Part 1062 of this chapter (St. Louis-Ozarks) minus 7 cents.

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

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

§ 1032.51 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.

§ 1032.52 Plant location adjustments for handlers.

(a) For producer milk received at a pool plant which is classified as Class I milk, the price specified in § 1032.50(a) shall be adjusted for the location of such plant by the following amount:

(1) At a plant in the southern zone, plus 7 cents;

(2) At a plant in the northern zone, minus 7 cents;

(3) At a plant outside the marketing area, minus 15 cents if such plant is 100 or more miles from the city or village limits of Alton, Robinson, or Vandalia, Ill., whichever is nearest, and minus an additional 1.5 cents for each 10 miles or fraction thereof that such distance exceeds 110 miles: *Provided*, That the adjustment at a plant outside the marketing area and in the State of Illinois south of the northernmost boundaries of the Illinois counties of Adams and Schuyler and at a plant in the Indiana counties of Fountain, Parke, Vermillion, and Warren shall be the same as for a pool plant located in the northern zone; and

(4) In determining location adjustments, mileage shall be based on the shortest hard-surfaced highway distance as determined by the market administrator.

(b) For purposes of calculating such adjustment, transfers between pool plants shall be assigned Class I disposition at the transferee-plant only to the extent that 105 percent of Class I disposition at the transferee-plant exceeds the sum of receipts at such plant from producers and handlers described in § 1032.9(c), and the volume assigned as Class I to receipts from other order plants and unregulated supply plants, such assignment to be made first to transferor-plants at which no location adjustment credit is applicable and then in sequence beginning with the plant at which the least location adjustment would apply.

(c) The Class I price applicable to other source milk shall be adjusted at the 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.

§ 1032.53 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.

§ 1032.54 Equivalent price.

If for any reason a price quotation required by this part for computing class prices or for other purposes is not available in the manner described, the market administrator shall use a price determined by the Secretary to be equivalent to the price which is required.

UNIFORM PRICE

§ 1032.60 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 § 1032.9 (b) and (c) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1032.44 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 § 1032.44(a)(14) and the corresponding step of § 1032.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1032.74, 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 § 1032.44 (a)(9) and the corresponding step of § 1032.44(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 § 1032.44(a)(7) (i) through (iv) and the corresponding step of § 1032.44 (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 § 1032.44(a)(7) (v) and (vi) and the corresponding step of § 1032.44 (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 § 1032.44(a)(11) and the corresponding step of § 1032.44 (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 § 1032.40 (b) that was in the plant's inventory at the end of the preceding month and classified as Class I milk.

§ 1032.61 Computation of uniform price (including weighted average 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 at plants located in the "base zone" as follows:

(a) Combine into one total the values computed pursuant to § 1032.60 for all handlers who filed the reports prescribed by § 1032.30 for the month and who made the payments pursuant to §§ 1032.71 and 1032.73 for the preceding month;

(b) Add an amount equal to the value of the net location and zone adjustments (reductions minus increases) applicable to the uniform price pursuant to § 1032.75;

(c) Add an amount equal to 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 § 1032.60(f);

(e) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the "weighted average price," and, except for the months specified below, shall be the "uniform price" for milk received from producers;

(f) For the months specified in paragraphs (g) and (h) of this section, subtract from the amount resulting from the computations pursuant to paragraphs (a) through (c) of this section an amount computed by multiplying the hundredweight of milk specified in paragraph (d)(2) of this section by the weighted average price;

(g) Subtract in the case of milk delivered during each of the months of March and July an amount equal to 15 cents per hundredweight and during each of the months of April, May, and June an amount equal to 25 cents per hundredweight of producer milk specified in paragraph (d)(1) of this section;

(h) Add in the case of milk delivered during each of the months of September and December 20 percent and during each of the months of October and November 30 percent of the total amount subtracted pursuant to paragraph (g) of this section;

(i) Divide the resulting sum by the total hundredweight of producer milk included in these computations; and

(j) 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.

§ 1032.62 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

§ 1032.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund," which shall function as follows:

(a) All payments made by handlers pursuant to §§ 1032.71, 1032.76, and 1032.77 shall be deposited in such fund and out of which shall be made all payments pursuant to §§ 1032.72 and 1032.77: *Provided,* That any payments due to any handler shall be offset by any payments due from such handler; and

(b) All amounts subtracted pursuant to § 1032.61(g) shall be deposited in this fund and set aside as an obligated balance until withdrawn to effectuate § 1032.73 in accordance with the requirements of § 1032.61(h).

§ 1032.71 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 § 1032.60.

(2) The sum of:

(i) The value at the uniform price, as adjusted pursuant to § 1032.75, of such handler's receipts of producer milk; and

(ii) The value at the weighted average price applicable at the location of the plant from which received of other source milk for which a value is computed pursuant to § 1032.60(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.

§ 1032.72 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 § 1032.71(a)(2) exceeds the amount computed pursuant to § 1032.71(a)(1). The market administrator shall offset any payment due any handler against any payments due from such handler.

§ 1032.73 Payments to producers and to cooperative associations.

(a) Except as provided in paragraphs (b), (c), and (d) of this section, each handler shall make payment for milk received during the month as follows:

(1) On or before the last day of each month to each producer who did not discontinue shipping milk to such handler before the 25th day of the month an amount equal to not less than the Class III price for the preceding month multiplied by the hundredweight of milk received from such producer during the first 15 days of the month, less proper deductions authorized by such producer to be made from payments due pursuant to this subparagraph:

(2) On or before the 20th day of the following month to each producer, an amount equal to not less than the uniform price, as adjusted pursuant to §§ 1032.74 and 1032.75, multiplied by the hundredweight of milk received from such producer during the month, subject to the following adjustments:

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

(ii) Less deductions for marketing services made pursuant to § 1032.86;

(iii) Plus or minus adjustments for errors made in previous payments made to such producer; and

(iv) Less proper deductions authorized in writing by such producer: *Provided,* That, if by such date, such handler has not received full payment from the market administrator pursuant to § 1032.72 for such month, he may reduce pro rata his payments to producers by not more than the amount of such underpayment. Payments to producers shall be completed thereafter not later than the date for making payments pursuant to this paragraph next following after the receipt of the balance due from the market administrator;

(b) Payments required in paragraph (a) of this section shall be made to a cooperative association, qualified under § 1032.18 or its duly authorized agent, which the market administrator determines is authorized by its members to collect payment for their milk and which has so requested any handler in writing. Such handler shall, on or before the 18th day of the following month pay the cooperative association for milk received during the month from the producer-members of such association as determined by the market administrator an amount equal to not less than the amount due such producer-members as determined pursuant to paragraph (a) of this section, less any deductions authorized in writing by such association: *Provided,* That the association has provided the handler with a written 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 18th day after the end of each month, each handler shall pay to each cooperative association for milk the handler receives at his pool plant from a pool plant(s) operated by such association, not less than the minimum prices for milk in each class, as adjusted by the butterfat differential specified in § 1032.74, that are applicable at the location of the handler's pool plant;

(d) On or before the 18th day of the following month, each handler, in his capacity as the operator of a pool plant, who receives milk for which a cooperative association is the handler pursuant to § 1032.9(c) shall pay such cooperative price as adjusted pursuant to §§ 1032.74 and 1032.75;

association for such milk at the uniform

(e) None of the provisions of this section shall be construed to restrict any cooperative association qualified under section 8c(5)(F) of the Act from making payment for milk to its producers in accordance with such provision of the Act, and

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

(1) On or before the 25th day of the month, the total pounds of milk received during the first 15 days of such month; and

(2) On or before the 7th day after the end of the month, the total pounds of milk received from each producer, together with the butterfat content of such milk, and the amount or rate and nature of any deductions authorized by the cooperative association.

§ 1032.74 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.

§ 1032.75 Plant location adjustments for producers and on nonpool milk.

(a) The uniform price for producer milk received at a pool plant shall be adjusted according to the location of the pool plant at the rates set forth in § 1032.52(a); and

(b) The weighted average price applicable to other source milk shall be subject to the same adjustments applicable to the uniform price under paragraph (a) of this section, except that the adjusted weighted average price shall not be less than the Class III price.

§ 1032.76 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 §§ 1032.30(b) and 1032.31(b) the information necessary for making the computations, such handler may elect to pay in lieu of such payment the amount computed pursuant to paragraph (b) of this section:

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

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

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

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

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

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

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

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

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

(1) Determine the value that would have been computed pursuant to § 1032.60 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 § 1032.60 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 § 1032.60 for such handler shall include, in lieu of the value of other source milk specified in § 1032.60(f) less the value of such other source milk specified in § 1032.71(a)(2)(ii), a value of milk determined pursuant to § 1032.60 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 § 1032.7 (b) and (c), subject to the following conditions:

(*a*) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1032.30(b) and 1032.31(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 § 1032.60 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 § 1032.74, 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 § 1032.74, 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.

§ 1032.77 Adjustment of accounts.

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

§ 1032.78 Charges on overdue accounts.

Any unpaid obligation of a handler pursuant to §§ 1032.71, 1032.85, or 1032.86 shall be increased one-half of 1 percent for each month or portion thereof that such payment is overdue.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

§ 1032.85 Assessment for order administration.

As his pro rata share of the expense of administering the order, each handler (excluding a handler described in § 1032.9 (c) with respect to milk delivered to pool plants) shall pay to the market administrator on or before the 20th day after the end of the month 5 cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to:

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

(b) Other source milk allocated to Class I pursuant to § 1032.44(a)(7) and (11) and the corresponding steps of § 1032.44(b), except such other source milk that is excluded from the computations pursuant to § 1032.60 (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 § 1032.76(a)(2).

§ 1032.86 Deduction for marketing services.

(a) *Deduction for marketing services.* Except as set forth in paragraph (b) of this section, each handler in making payments to producers pursuant to § 1032.73, shall deduct 6 cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to all milk received by such handler from producers (excluding such handler's own production) during the month, and shall pay such deductions to the market administrator on or before the 20th 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 such producers and to provide them with market information. Such services shall be performed in whole or in part by the market administrator or by an agent engaged by and responsible to him.

(b) *Producers cooperative 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, in lieu of the deduction specified in paragraph (a) of this section, shall make such marketing service deductions as are authorized by producer-members, and pay the money so deducted to the cooperative association on or before the 20th day after the end of the month.

PART 1046—MILK IN LOUISVILLE-LEXINGTON-EVANSVILLE MARKETING AREA

Subpart—Order Regulating Handling

GENERAL PROVISIONS

Secs.
1046.1 General provisions.

DEFINITIONS

1046.2 Louisville-Lexington-Evansville marketing area.
1046.3 Route disposition.
1046.4 [Reserved]
1046.5 City plant.
1046.6 Country plant.
1046.7 Pool plant.
1046.8 Nonpool plant.
1046.9 Handler.
1046.10 Producer-handler.
1046.11 [Reserved]
1046.12 Producer.
1046.13 Producer milk.
1046.14 Other source milk.
1046.15 Fluid milk product.
1046.16 Fluid cream product.
1046.17 Filled milk.
1046.18 Cooperative association.

HANDLER REPORTS

1046.30 Reports of receipts and utilization.
1046.31 Payroll reports.
1046.32 Other reports.

CLASSIFICATION OF MILK

1046.40 Classes of utilization.
1046.41 Shrinkage.
1046.42 Classification of transfers and diversions.
1046.43 General classification rules.
1046.44 Classification of producer milk.
1046.45 Market administrator's reports and announcements concerning classification.

CLASS PRICES

1046.50 Class prices.
1046.51 Basic formula price.
1046.52 Plant location adjustments for handlers.
1046.53 Announcement of class prices.
1046.54 Equivalent price.

UNIFORM PRICE

1046.60 Handler's value of milk for computing uniform price.
1046.61 Computation of uniform price (including weighted average price).
Secs.
1046.62 Announcement of uniform price and butterfat differential.

PAYMENTS FOR MILK

1046.70 Producer-settlement fund.
1046.71 Payments to the producer-settlement fund.
1046.72 Payments from the producer-settlement fund.
104673 Payments to producers and to cooperative associations.
1046.74 Butterfat differential.
1046.75 Plant location adjustments for producers and on nonpool milk.
1046.76 Payments by handler operating a partially regulated distributing plant.
1046.77 Adjustment of accounts.
1046.78 Charges on overdue accounts.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

1046.85 Assessment for order administration.
1046.86 Deduction for marketing services.

AUTHORITY: The provisions of this Part 1046. issued under secs. 1–19, 48 Stat. 31, as amended; (7 U.S.C. 601–674).

GENERAL PROVISIONS

§ 1046.1 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

§ 1046.2 Louisville-Lexington-Evansville marketing area.

The "Louisville-Lexington-Evansville marketing area", hereinafter called the "marketing area", means all the territory geographically within the counties listed below and all territory wholly or partly therein occupied by municipal corporations and institutions owned or operated by Federal, State or local governments:

INDIANA COUNTIES

Clark.
Crawford.
Daviess.
Dubois.
Floyd.
Gibson.
Harrison.
Knox.
Martin.
Orange.
Perry.
Pike.
Posey.
Spencer.
Vanderburgh.
Warrick.
Washington.

KENTUCKY COUNTIES

Adair.
Anderson.
Bourbon.
Boyle.
Breckinridge.
Bullit.
Butler.
Casey.
Clark.
Clinton.
Cumberland.
Daviess.
Edmonson.
Fayette.
Franklin.
Garrard.
Grayson.
Green.
Hancock.
Hardin.
Hart.
Henderson.
Henry.
Hopkins.
Jefferson.
Jessamine.
Larue.
Lincoln.
Logan.
Madison.
Marion.
McLean.
Meade.
Mercer.
Muhlenberg.
Nelson.
Ohio.
Oldham.
Pulaski.
Russell.
Scott.
Shelby.
Spencer.
Taylor.
Union.
Washington.
Wayne.
Webster.
Woodford.

§ 1046.3 Route disposition.

"Route disposition" means delivery (including disposition from a plant store or from a distribution point and distribution by a vendor) of a fluid milk product(s) classified as Class I milk to a wholesale or retail outlet(s) other than to a milk or filled milk plant(s). A delivery through a distribution point shall be attributed to the plant from which the Class I milk is moved through a distribution point to wholesale or retail outlets without intermediate movement to another milk or filled milk plant.

§ 1046.4 [Reserved]

§ 1046.5 City plant.

"City plant" means a plant where milk is processed or packaged and from which there is route disposition in the marketing area of fluid milk products permitted to be labeled as "Grade A" by a duly constituted health authority.

§ 1046.6 Country plant.

"Country plant" means a milk plant, other than a city plant, which is approved by a duly constituted health authority to supply milk or skim milk to a city plant(s) for disposition as "Grade A" milk and at which milk is received during the month from persons described in § 1046.12(a)(1) or from a handler described in § 1046.9(c).

§ 1046.7 Pool plant.

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

(a) A city plant which meets the following requirements:

(1) For each of the months of May through October not less than 30 percent and for each of the months of November through April not less than 50 percent of the fluid milk products, except filled milk, received during the 2 months immediately preceding from persons described in § 1046.12(a)(1), from a handler described in § 1046.9(c), from country plants and from pool plants in containers not larger than a gallon is disposed of as Class I milk, except filled milk, from such plant during such 2-month period to all outlets except such disposition to pool plants in containers larger than a gallon: *Provided*, That, if such utilization percentage for the 2 preceding months cannot be ascertained by the market administrator, the respective percentages shall apply to receipts and sales during the current month; and

(2) There is an amount of route disposition in the marketing area, except filled milk, equal to not less than an average of 13,500 pounds per day or not less than 10 percent of the fluid milk products, except filled milk, received during the current month from persons described in § 1046.12(a)(1), from a handler described in § 1046.9(c), and from country plants.

(b) A country plant during any of the months of October through March from which not less than 50 percent, and during other months not less than 40 percent, of the receipts of milk at such plant from persons described in § 1046.12(a)(1) and from a handler described in § 1046.9(c) is moved to and received at a city plant in the form of milk or skim milk.

(c) A country plant during the months of April through September from which not less than 50 percent of the combined receipts of milk from persons described in § 1046.12(a)(1) and from a handler described in § 1046.9(c) during the preceding period of October through March was moved to and received at a city plant(s) in the form of milk or skim milk, unless the operator of such plant notifies the market administrator in writing on or before March 15 of withdrawal of the plant from the pool for the months of April through September next following.

(d) A country plant which is operated by a cooperative association if (1) two-thirds or more of the milk from persons described in § 1046.12(a)(1) who are members of such association is delivered during the month from farms to the pool plant(s) of other handlers or transferred by such association from its plant to the pool plant(s) of other handlers or (2) such plant qualified as a pool plant pursuant to paragraph (d)(1) of this section during each of the immediately preceding consecutive months of October through February.

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

(1) A producer-handler plant; and

(2) Unless determined otherwise by the Secretary, a milk plant during any month in which the milk at such plant would be subject to the pricing and pooling provisions of another order issued pursuant to the Act unless such plant meets the requirements for a pool plant pursuant to paragraph (a), (b), (c) or (d) of this section and a greater volume of fluid milk products, except filled milk, is disposed of from such plant in the Louisville-Lexington-Evansville marketing area to other pool plants and to retail or wholesale outlets than in the marketing area regulated pursuant to such other order during the current month.

§ 1046.8 Nonpool plant.

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

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

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

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

(d) "Unregulated supply plant" means a nonpool plant other than a producer-handler plant or an other order plant, from which fluid milk products are shipped to a pool plant.

§ 1046.9 Handler.

"Handler" means:

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

(b) Any cooperative association with respect to milk diverted by it in accordance with the conditions set forth in § 1046.13;

(c) Any cooperative association with respect to the milk of its producer members which is delivered for the account of the cooperative association from the farm to the pool plant(s) of another handler in a tank truck owned by, operated by, or under contract to such cooperative association if the cooperative association has notified in writing prior to delivery both the market administrator and the handler to whom the milk is delivered that it wishes to be the handler for such milk. Such milk shall be considered as having been received by the cooperative association at the location of the plant to which it was delivered;

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

(e) A producer-handler; and

(f) Any person who operates an other order plant described in § 1046.7(e).

§ 1046.10 Producer-handler.

"Producer-handler" means any person who processes and packages milk from his own farm production, distributes any portion of such milk as route disposition in the marketing area and receives no fluid milk products from other dairy farmers or nonpool plants and no milk products other than fluid milk products for reconstitution into fluid milk products: *Provided*, That such person provides proof satisfactory to the market administrator that (a) the care and management of all of the dairy animals and other resources necessary to produce the entire amount of fluid milk handled (excluding transfers from pool plants) is the personal enterprise of and at the personal risk of such person, and (b) the operation of the processing and distributing business is the personal enterprise of and at the personal risk of such person.

§ 1046.11 [Reserved]

§ 1046.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person:

(1) Who produces milk on a dairy farm which is approved by a duly constituted health authority for the production of milk for fluid disposition (this definition shall include approval of milk by the authority to administer the regulations governing the quality of milk acceptable to agencies of the United States Government for fluid consumption in its institutions or bases located in the marketing area during any month in which such milk is disposed of to such institutions or bases); and

(2) Whose milk so produced pursuant to paragraph (a)(1) of this section is received at a pool plant or by a handler described in § 1046.9(c) or diverted in accordance with the conditions set forth in § 1046.13.

(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 § 1046.44(a)(8)(iii) and the corresponding step of § 1046.44(b); and

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

§ 1046.13 Producer milk.

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

(a) Received from producers at a pool plant for the account of the person operating such plant. When milk is withdrawn at more than one pool plant from the same load delivered by a farm tank pickup truck, the entire load shall be deemed to have been received at the first pool plant at which any of such milk was withdrawn unless:

(1) There is an agreement among the operators of the pool plants receiving such milk providing for other receiving handler(s) to report and pay for all or a portion of such milk; or

(2) The milk involved is that which is delivered to pool plants for the account of a handler described in § 1046.9(c).

(b) Diverted by a handler from a pool plant to another pool plant for any number of days of the month. Milk so diverted shall be deemed to have been received by the diverting handler at the location of the pool plant from which it is diverted.

(c) 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 or a cooperative association, subject to the following conditions;

(1) Milk so diverted shall be deemed to have been received at the pool plant from which it is diverted; and

(2) Producer milk pursuant to this paragraph shall not include the milk of any person during any of the months of October, November, January and February on days on which it is diverted by a handler to a nonpool plant in excess of 22 days (11 days in the case of every-other-day delivery) during the month.

(d) Received by a handler described in § 1046.9(c).

§ 1046.14 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 § 1046.40(b)(1) from any source other than producers, handlers described in § 1046.9(c), or pool plants;

(b) Receipts in packaged form from other plants of products specified in § 1046.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1046.40(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 § 1046.40(b)(1)) for which the handler fails to establish a disposition.

§ 1046.15 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 § 1046.40 (b) or (c)(1) (i) through (v) if it contains by weight at least 80 percent water and 6.5 percent nonfat milk solids and less than 9 percent butterfat and 20 percent total solids.

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

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

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

§ 1046.16 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.

§ 1046.17 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).

§ 1046.18 Cooperative association.

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

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

(b) To 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

§ 1046.30 Reports of receipts and utilization.

On or before the 8th day after the end of each month, each handler shall report for such month to the market administrator, in the detail and on the forms prescribed by the market administrator, as follows:

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

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

(2) Receipts of milk from handlers described in § 1046.9(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 § 1046.40(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 § 1046.9(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.

§ 1046.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described § 1046.9(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 na-

ture of any deductions, and the net amount paid.

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1046.76 (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.

§ 1046.32 Other reports.

(a) Each handler shall report to the market administrator, as soon as possible after first receiving milk from any producer, the name and address of such producer, the date upon which such milk was first received, and the plant at which such milk was received.

(b) On or before the 10th day after the request of the market administrator, each handler shall submit a schedule of rates which are charged and paid for the transportation of milk from the farm of each producer to such handler's plant. Changes in such schedule of rates and the effective dates thereof shall be reported to the market administrator within 10 days.

(c) In addition to the reports required pursuant to paragraphs (a) and (b) of this section and §§ 1046.30 and 1046.31, 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

§ 1046.40 Classes of utilization.

Except as provided in § 1046.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1046.30 shall be classified as follows:

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

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

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

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

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

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

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

(4) Used to produce:

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

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

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

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

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

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

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

(1) Used to produce:

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

(ii) Butter;

(iii) Any milk product in dry form;

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

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

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

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

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

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

(5) In skim milk in any modified fluid milk product that is in excess of the quantity of skim milk in such product that was included within the fluid milk product definition pursuant to § 1046.15; and

(6) In shrinkage assigned pursuant to § 1046.41(a) to the receipts specified in § 1046.41(a)(2) and in shrinkage specified in § 1046.41 (b) and (c).

§ 1046.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1046.30, the market administrator shall determine the following:

(a) The total shrinkage of skim milk and butterfat, respectively, at each pool plant, which shall be assigned pro rata to:

(1) The quantity of skim milk and butterfat, respectively, that is equal to 50 times the maximum amount that may be computed pursuant to paragraph (b) of this section; and

(2) The quantity of skim milk and butterfat, respectively, in other source milk received in bulk form as fluid milk products or bulk fluid cream products, excluding any such receipts used in the computations pursuant to paragraph (b) (5) and (6) of this section;

(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 § 1046.9(c) and in milk diverted to such plant from another pool plant, except that, in either case, if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be 2 percent;

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

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

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

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

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

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1046.9 (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.

§ 1046.42 Classification of transfers and diversions.

(a) *Transfers and diversions to pool plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant or by a handler described in § 1046.9(c) to another handler's pool plant shall be classified as Class I milk unless both handlers request the same classification in another class. In either case, the classification of such transfers or diversions shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant or divertee-plant after the computations pursuant to § 1046.44(a)(12) and the corresponding step of § 1046.44(b);

(2) If the transferor-plant or divertor-plant received during the month other source milk to be allocated pursuant to § 1046.44(a)(7) or the corresponding step of § 1046.44(b), the skim milk or butterfat so transferred or diverted shall be classified so as to allocate the least possible Class I utilization to such other source milk;

(3) If the transferor-handler or divertor-handler received during the month other source milk to be allocated pursuant to § 1046.44(a) (11) or (12) or the corresponding steps of § 1046.44(b), the skim milk or butterfat, so transferred or diverted, up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant or divertee-plant; and

(4) If a specified classification is not claimed by both handlers in the case of transfers or diversions by such a cooperative association, such skim milk and butterfat shall be classified pro rata to the respective amounts remaining in each class at the pool plant of the transferee- or divertee-handler after making the assignments pursuant to § 1046.44(a)(12) and the corresponding step of § 1046.44(b), and after the assignment of milk for which a specified classification has been claimed pursuant to this paragraph.

(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 § 1046.40.

(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 § 1046.30 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.

§ 1046.43 General classification rules.

In determining the classification of producer milk pursuant to § 1046.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1046.30 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 § 1046.9 (b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1046.40, 1046.41, and 1046.42;

(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 § 1046.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1046.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1046.9(a) for each of his pool plants separately and of each handler described in § 1046.9 (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 § 1046.41 (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 § 1046.40(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 § 1046.40(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 § 1046.40(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 § 1046.40(b) (1) that was not subtracted pursuant to paragraph (a) (4), (5), and (6) of this section;

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

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

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

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

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

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

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

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

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

(*b*) Subtract from the above result the sum of the pounds of skim milk in receipts at all pool plants of the handler of producer milk, milk from a handler described in § 1046.9(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 § 1046.40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to paragraphs (a)(5) and (7)(i) of this section;

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

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

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

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

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

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

(*a*) The estimated utilization of skim milk of all handlers in each class as announced for the month pursuant to § 1046.45(a); or

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

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

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

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

(13) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products and bulk fluid cream products from another pool plant or a handler described in § 1046.9(c) according to the classification of such products pursuant to § 1046.42(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 suant to paragraph (a)(14) of this section and the corresponding step of paragraph (b) of this section.

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

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

§ 1046.45 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 § 1046.44(a)(12) and the corresponding step of § 1046.44(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 § 1046.44 on the basis of such report, and, thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

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

(d) On or before the 15th day after the end of each month, report to each

cooperative association, which so requests, with respect to milk delivered by such association or by its members to each handler during the month: (1) The percentage of such receipts classified in each class; and (2) the percentage relationship of such receipts to the total pounds of Class I milk available to assign to such receipts exclusive of the Class I milk disposed of by such handler to the pool plant(s) of other handlers and to nonpool plants. For the purpose of these reports, the milk received from such association shall be treated on a pro rata basis of the total producer milk received by such handler during the month.

CLASS PRICES

§ 1046.50 Class prices.

Subject to the provisions of § 1046.52, 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 $1.49.

(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.

§ 1046.51 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.

§ 1046.52 Plant location adjustments for handlers.

(a) For that milk received from producers or from a handler described in § 1046.9(c) at a pool plant located at any point which is 85 miles or more from the City Hall in Evansville, Indiana, or Louisville, Lexington, Danville, Elizabethtown, or Madisonville, Kentucky, whichever is nearer, by the shortest hard-surfaced highway distance as determined by the market administrator, and which is classified as Class I milk subject to the limitations pursuant to paragraph (b) of this section, the price specified in § 1046.50(a) shall be reduced at the rate set forth in the following schedule according to the location of the plant where such milk is received:

	Rate per hundredweight (cents)
Distance from City Hall:	
85 miles but less than 95 miles	15.0
For each additional 10 miles or fraction thereof an additional	1.5

(b) For purposes of calculating such adjustment, transfers between pool plants shall be assigned to that Class I disposition at the transferee-plant which is in excess of the sum of receipts at such plant from producers and handlers described in § 1046.9(c), and the volume assigned as Class I to receipts from other order plants and unregulated supply plants, such assignment to be made first to transferor-plants at which no location adjustment credit is applicable and then in sequence beginning with the plant at which the least location adjustment would apply.

(c) The Class I price applicable to other source milk shall be adjusted at the 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.

§ 1046.53 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.

§ 1046.54 Equivalent price.

If for any reason a price quotation required by this part for computing class prices or for other purposes is not available in the manner described, the market administrator shall use a price determined by the Secretary to be equivalent to the price which is required.

UNIFORM PRICE

§ 1046.60 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 § 1046.9 (b) and (c) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1046.44 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 § 1046.44(a)(14) and the corresponding step of § 1046.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1046.74, 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 § 1046.44(a)(9) and the corresponding step of § 1046.44(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 § 1046.44(a)(7) (i) through (iv) and the corresponding step of § 1046.44 (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 § 1046.44(a)(7) (v) and (vi) and the corresponding step of § 1046.44(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 § 1046.44(a)(11) and the corresponding step of § 1046.44(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.

§ 1046.61 Computation of uniform price (including weighted average 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 § 1046.60 for all handlers who filed the reports prescribed by § 1046.30 for the month and who are not in default of payments pursuant to § 1046.71 for the preceding month;

(b) Add an amount equal to the total value of the location adjustments computed pursuant to § 1046.75;

(c) Add an amount equal to 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 § 1046.60(f);

(e) Subtract not less than four cents nor more than five cents per hundredweight. The result shall be the "weighted average price", and, except for the months specified below, shall be the "uniform price" for milk received from producers;

(f) For the months specified in paragraphs (g) and (h) of this section, subtract from the amount resulting from the computations pursuant to paragraphs (a) through (c) of this section an amount computed by multiplying the hundredweight of milk specified in paragraph (d)(2) of this section by the weighted average price;

(g) Subtract for each month of April through July the amount obtained by multiplying the hundredweight of pro-

ducer milk included in these computations by a rate that is equal to 10 percent of the average basic formula price (computed to the nearest cent) for the preceding calendar year but that is not more than 40 cents;

(h) Add during each of the months of September, October, November and December one-fourth of the total amount subtracted pursuant to paragraph (g) of this section;

(i) Divide the resulting sum by the total hundredweight of producer milk included in these computations; and

(j) Subtract not less than four cents nor more than five cents per hundredweight. The result shall be the "uniform price" per hundredweight for milk of 3.5 percent butterfat received from producers.

§ 1046.62 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.

§ 1046.70 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 §§ 1046.71, 1046.76, and 1046.77 subject to the provisions of § 1046.78, and from which he shall make all payments pursuant to §§ 1046.72 and 1046.77: *Provided,* That payments due any handler shall be offset by payments due from such handler.

§ 1046.71 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 § 1046.60.

(2) The sum of:

(i) The value at the uniform price, as adjusted pursuant to § 1046.75, of such handler's receipts of producer milk; and

(ii) The value at the weighted average price applicable at the location of the plant from which received of other source milk for which a value is computed pursuant to § 1046.60(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.

§ 1046.72 Payments from the producer-settlement fund.

On or before the 16th 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 § 1046.71(a)(2) exceeds the amount computed pursuant to § 1046.71(a)(1): *Provided,* That the market administrator shall offset any payment due any handler against payments due from such handler, and 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.

§ 1046.73 Payments to producers and to cooperative associations.

Except as provided in paragraph (c) of this section, each handler shall make payment to each producer for milk received from such producer as follows:

(a) On or before the last day of each month for milk received during the first 15 days of the month from such producer who has not discontinued delivery of milk to such handler, an amount computed at not less than the Class III price for the preceding month without deduction for hauling.

(b) On or before the 17th day after the end of each month for milk received from such producer during such month, an amount computed at not less than the uniform price per hundredweight for the month, as adjusted pursuant to §§ 1046.74 and 1046.75, and plus or minus adjustments for errors made in previous payments to such producer and less (1) the payment made pursuant to paragraph (a) of this section, (2) deductions for marketing services pursuant to § 1046.86, and (3) proper deductions authorized by such producer which, in the case of a deduction for hauling, shall be in writing and signed by such producer or, in the case of members of a cooperative association which is marketing the producer's milk, by such association.

(c)(1) Upon receipt of a written request from a cooperative association which the market administrator determines is authorized by its members to collect payment for their milk and receipt of a written promise to reimburse the handler the amount of any actual loss incurred by him because of any improper claim on the part of the cooperative association in lieu of payments pursuant to paragraphs (a) and (b) of this section, each handler shall pay to the cooperative association on or before the second day prior to the dates specified in paragraphs (a) and (b), respectively, of this section, an amount equal to the sum of the individual payments otherwise payable to such producers without the deductions provided by paragraphs (b)(2) and (3) of this section: *Provided,* That deductions for supplies authorized by such producer may be made. 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 month next following receipt of such certification through the last day of the month next preceding receipt of notice from the cooperative association of a termination of membership or until the original request is rescinded in writing by the cooperative association.

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

(d) In making the payments to producers pursuant to paragraph (b) of this section, each handler shall furnish each producer a supporting statement which shall show for each month the following:

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

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

(3) The minimum rate or rates at which payment to such producer is required pursuant to this part;

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

(5) The amount or the rate per hundredweight and nature of each deduction claimed by the handler; and

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

(e) In making payments to a cooperative association pursuant to paragraph (c) of this section, each handler shall report to such cooperative association for 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 such month, and

(2) On or before the 7th day of the following month, the total pounds of milk received each month, together with the butterfat content of such milk and the amount of deductions claimed by such handler.

(f) Each handler shall pay to the cooperative association on or before the 10th day of the following month for milk

received from it as a handler described in § 1046.9(c) an amount computed at not less than the value of such milk at the minimum prices for milk in each class, as adjusted by the butterfat differential specified in § 1046.74, that are applicable at the location of the receiving handler's pool plant.

§ 1046.74 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.

§ 1046.75 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 § 1046.52; and

(b) For purposes of computations pursuant to §§ 1046.71 and 1046.72 the weighted average price shall be reduced at the rates set forth in § 1046.52 applicable at the location of the nonpool plant(s) from which the milk was received, except that the adjusted weighted average price shall not be less than the Class III price.

§ 1046.76 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 §§ 1046.30(b) and 1046.31(b) the information necessary for making the computations, such handler may elect to pay in lieu of such payment the amount computed pursuant to paragraph (b) of this section:

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

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

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

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

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

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

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

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

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

(1) Determine the value that would have been computed pursuant to § 1046.60 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 plants;

(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 § 1046.60 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 § 1046.60 for such handler shall include, in lieu of the value of other source milk specified in § 1046.60(f) less the value of such other source milk specified in § 1046.71(a)(2)(ii), a value of milk determined pursuant to § 1046.60 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 § 1046.7 (b) and (c), subject to the following conditions:

(a) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1046.30 (b) and 1046.31(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 § 1046.60 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 § 1046.74, 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 § 1046.74, 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.

§ 1046.77 Adjustment of accounts.

Whenever verification by the market administrator of payments by any handler discloses errors made in payments to the producer-settlement fund, the market administrator shall promptly bill such handler for any unpaid amount and such handler shall, within 15 days, make payment to the market administrator of the amount so billed. Whenever such verification discloses that payment is due from the market administrator to any handler, pursuant to § 1046.72, the market administrator shall, within 15 days, make such payment to such handler. Whenever verification by the market administrator of the payment by a handler to any producer for milk received by such handler discloses payment of less than is required by § 1046.73, the handler shall pay any amount so due not later than the time of making payment to producers next following such disclosure.

§ 1046.78 Charges on overdue accounts.

Any unpaid obligation of a handler or of the market administrator pursuant to

§§ 1046.71, 1046.72, 1046.73, 1046.76, 1046.77, 1046.85, or 1046.86 shall be increased one-half of one percent on the first 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

§ 1046.85 Assessment for order administration.

As his pro rata share of the expense of administration of the order, each handler, excluding a handler described in § 1046.9(c), shall pay to the market administrator on or before the 15th day after the end of the month three cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to:

(a) Producer milk (including such handler's own production) and milk received from a handler described in § 1046.9(c);

(b) Other source milk allocated to Class I pursuant to § 1046.44(a) (7) and (11) and the corresponding steps of § 1046.44(b), except such other source milk that is excluded from the computations pursuant to § 1046.60 (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 § 1046.76(a)(2).

§ 1046.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler, in making payments to producers pursuant to § 1046.73(b), shall deduct 5 cents per hundredweight, or such amount not in excess thereof as the Secretary may prescribe, with respect to all milk received by such handler from producers (other than such handler's own farm production) during the month and 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 verify weights, samples, and tests of milk received from such producers 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) Each cooperative association which is actually performing the services described in paragraph (a) of this section, as determined by the market administrator, may file with a handler a claim for authorized deductions from the payments otherwise due to its producer members for milk delivered to such handler. Such claim shall contain a list of the producers for whom such deductions apply, an agreement to indemnify the handler in the making of the deductions, and a certification that the association has an unterminated membership contract with each producer. In making payments to producers for milk received during the month, each handler shall make, in lieu of the deduction specified in paragraph (a) of this section, deductions in accordance with the association's claim and shall pay the amount deducted to the association within 15 days after the end of the month.

PART 1049—MILK IN INDIANA MARKETING AREA

Subpart—Order Regulating Handling

GENERAL PROVISIONS

Sec.
1049.1 General provisions.

DEFINITIONS

1049.2 Indiana marketing area.
1049.3 Route disposition.
1049.4 [Reserved]
1049.5 Distributing plant.
1049.6 Supply plant.
1049.7 Pool plant.
1049.8 Nonpool plant.
1049.9 Handler.
1049.10 Producer-handler.
1049.11 [Reserved]
1049.12 Producer.
1049.13 Producer milk.
1049.14 Other source milk.
1049.15 Fluid milk product.
1049.16 Fluid cream product.
1049.17 Filled milk.
1049.18 Cooperative association.

HANDLER REPORTS

1049.30 Reports of receipts and utilization.
1049.31 Payroll reports.
1049.32 Other reports.

CLASSIFICATION OF MILK

1049.40 Classes of utilization.
1049.41 Shrinkage.
1049.42 Classification of transfers and diversions.
1049.43 General classification rules.
1049.44 Classification of producer milk.
1049.45 Market administrator's reports and announcements concerning classification.

CLASS PRICES

1049.50 Class prices.
1049.51 Basic formula price.
1049.52 Plant location adjustments for handlers.
1049.53 Announcement of class prices.
1049.54 Equivalent price.

UNIFORM PRICE

1049.60 Handler's value of milk for computing uniform price.
1049.61 Computation of uniform price (including weighted average price).
1049.62 Announcement of uniform price and butterfat differential.

PAYMENTS FOR MILK

1049.70 Producer-settlement fund.
1049.71 Payments to the producer-settlement fund.
1049.72 Payments from the producer-settlement fund.
1049.73 Payments to producers and to cooperative associations.
1049.74 Butterfat differential.
1049.75 Plant location adjustments for producers and on nonpool milk.
1049.76 Payments by handler operating a partially regulated distributing plant.
1049.77 Adjustment of accounts.
1049.78 Charges on overdue accounts.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

1049.85 Assessment for order administration.
1049.86 Deduction for marketing services.

ADVERTISING AND PROMOTION PROGRAM

Secs.
1049.110 Agency.
1049.111 Composition of the Agency.
1049.112 Term of office.
1049.113 Selection of Agency members.
1049.114 Agency operating procedure.
1049.115 Powers of the Agency.
1049.116 Duties of the Agency.
1049.117 Advertising, research, education, and promotion program.
1049.118 Limitation of expenditures by the Agency.
1049.119 Personal liability.
1049.120 Procedure for requesting refunds.
1049.121 Duties of the market administrator.
1049.122 Liquidation.

AUTHORITY.—The provisions of this Part 1049 issued under secs. 1–19, 48 Stat. 31, as amended; (7 U.S.C. 601–674).

GENERAL PROVISIONS

§ 1049.1 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

§ 1049.2 Indiana marketing area.

"Indiana marketing area" (hereinafter referred to as the "marketing area") means all the territory within the boundaries of each of the Indiana 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:

Adams.
Allen.
Bartholomew.
Blackford.
Boone.
Brown.
Cass.
Clay.
Clinton.
Decatur.
De Kalb.
Delaware.
Elkhart.
Fayette.
Fountain.
Franklin.
Fulton.
Grant.
Hamilton.
Hancock.
Hendricks.
Henry.
Howard.
Huntington.
Jackson.
Jay.
Johnson.
Kosciusko.
Lagrange.
Lake.
La Porte.
Lawrence.
Madison.
Marion.
Marshall.
Miami.
Monroe.
Montgomery.
Morgan.
Noble.
Owen.
Parke.
Porter.
Putnam.
Randolph.
Rush.
Shelby.
Steuben.
St. Joseph.
Starke.
Tippecanoe.
Tipton.
Union.
Vermillion.
Vigo.
Wabash.
Warren.
Wayne.
Wells.
Whitley.

§ 1049.3 Route disposition.

"Route disposition" means a delivery (including that custom-packaged for another person, disposition from a plant store or from a distribution point and distribution by a vendor or vending machine) of any fluid milk product classified as Class I milk other than a delivery in bulk form to any milk or filled milk processing plant.

§ 1049.4 [Reserved]

§ 1049.5 Distributing plant.

"Distributing plant" means a plant approved by any duly constituted health authority for the processing or packaging of milk for fluid consumption in the marketing area and from which there is route disposition during the month in the marketing area.

§ 1049.6 Supply plant.

"Supply plant" means a plant in which some milk approved by any duly constituted health authority for fluid consumption in the marketing area is assembled and shipped in bulk as milk or skim milk to a distributing plant during the month.

§ 1049.7 Pool plant.

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

(a) A distributing plant with:

(1) Total route disposition, exclusive of packaged fluid milk products received from other plants and filled milk, in an amount not less than 50 percent of Grade A milk received at such plant during the month from dairy farmers (excluding receipts of producer milk by diversion pursuant to § 1049.13) and supply plants, except that a plant meeting such percentage requirement for the preceding month may remain qualified under this subparagraph in the current month; and

(2) Route disposition within the marketing area during the month of at least 10 percent of such receipts, such route disposition to be exclusive of packaged fluid milk products received from other plants and filled milk: *Provided*, That any plant meeting the requirements of this paragraph in each of the months of September through May, inclusive, shall continue to have pool plant status in the months of June, July, and August, immediately following if there is route disposition, except filled milk, from the plant in the marketing area during such month.

(b) A supply plant from which not less than 50 percent of the Grade A milk received from dairy farmers at such plant during the month is shipped to plants qualifying for the month pursuant to paragraph (a) of this section. A plant qualified pursuant to this paragraph in each of the immediately preceding months of September through February shall remain so qualified for the months of April through August unless written application is filed with the market administrator on or before the first day of any such month to designate such plant as a nonpool plant for such month and for each subsequent month through August during which it would otherwise not qualify under this paragraph.

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

(1) A producer-handler plant;

(2) A distributing plant from which the Secretary determines there is a greater proportion of route disposition (except filled milk) 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 it has a greater proportion of its route disposition (except filled milk) in such other marketing area, unless, notwithstanding the provisions of this subparagraph, it is regulated by such other order;

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

(4) A supply plant which during the month is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act, unless such plant is qualified as a pool plant pursuant to paragraph (b) of this section and a greater volume of fluid milk products (except filled milk) is moved to pool distributing plants qualified on the basis of route disposition in this marketing area; and

(5) 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.

§ 1049.8 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 supply plant that is not an other order plant or a producer-handler plant, from which fluid milk products are shipped during the month to a pool plant.

§ 1049.9 Handler.

"Handler" means:

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

(b) Any cooperative association with respect to producer milk diverted for the account of such association pursuant to § 1049.13;

(c) [Reserved]

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

(e) A producer-handler; or

(f) Any person who operates an other order plant described in § 1049.7(c).

§ 1049.10 Producer-handler.

"Producer-handler" means a person who operates a dairy farm and a distributing plant and who receives no fluid milk products from other dairy farmers or from sources other than pool plants, and no milk products other than fluid milk products for reconstitution into 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 used in his own farm production and the operation of the processing and distributing business are at the personal enterprise and risk of such person.

§ 1049.11 [Reserved]

§ 1049.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who in compliance with Grade A inspection requirements of a duly constituted health authority, produces milk for distribution as fluid milk products within the marketing area or produces milk acceptable for fluid consumption at Federal, State, or municipal institutions, which milk is received at a pool plant or diverted pursuant to § 1049.13.

(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 § 1049.44(a)(8)(iii) and the corresponding step of § 1049.44(b); and

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

§ 1049.13 Producer milk.

"Producer milk" means all skim milk and butterfat contained in milk of any producer which is:

(a) Received at one or more pool plants during the month (milk may be diverted during the month by a handler from a pool distributing plant to another pool plant(s) for not more days of production of producer milk than is physically received at the diverting pool plant).

(b) Received at a pool plant at least one day during the month and then diverted by the operator of a pool plant or by a cooperative association to a nonpool plant that is not a producer-handler plant during the month under any of the following conditions:

(1) During April through August the operator of a pool plant or a cooperative association may divert the milk production of a producer from a pool plant to a nonpool plant on any number of days during the month.

(2) During September through March the milk of a producer diverted by the operator of a pool plant or a cooperative association to a nonpool plant shall be limited to the amounts specified in paragraph (b)(2) (i) and (ii) of this section:

(i) The operator of a pool plant may divert the milk of producers (except producer members of a cooperative association which is diverting milk under the percentage limit of paragraph (b)(2) (ii) of this section) for not more days of production of producer milk than is physically received at the diverting pool plant or he may divert an aggregate quantity not exceeding 40 percent of the milk of all such producers.

(ii) A cooperative association may divert the milk of its individual member producers for not more days of production of producer milk than is physically received at a pool plant or it may divert an aggregate quantity of the milk of member producers not exceeding 40 percent of all such milk either caused to be delivered to pool plants or diverted to nonpool plants by the cooperative association.

(3) When milk is diverted in excess of the limit by a handler who elects to divert on the basis of days-of-production, only that milk of the individual producer which was received at a pool plant or which was diverted to a nonpool plant for not more days of production than is physically received at a pool plant shall be considered producer milk.

(4) When milk is diverted in excess of the percentage limit by a handler who elects to divert on a percentage basis, eligibility as producer milk shall be forfeited on a quantity of milk equal to such excess. In such instances 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 nonpool plants by such handler.

(c) Diverted milk shall be deemed to be received by the handler at the pool plant or nonpool plant to which the milk is diverted, unless diverted to a plant located in any part of the marketing area or to a plant at which no location adjustment would apply pursuant to § 1049.52, in which case such diverted milk shall be deemed to be received at the pool plant from which diverted.

§ 1049.14 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 § 1049.40(b)(1) from any source other than producers, or pool plants;

(b) Receipts in packaged form from other plants of products specified in § 1049.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1049.40(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 § 1049.40(b)(1)) for which the handler fails to establish a disposition.

§ 1049.15 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 § 1049.40 (b) or (c)(1) (i) through (v) if it contains by weight at least 80 percent water and 6.5 percent nonfat milk solids and less than 9 percent butterfat and 20 percent total solids.

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

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

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

§ 1049.16 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.

§ 1049.17 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).

§ 1049.18 Cooperative association.

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

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

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

(c) To have all of its activities under the control of its members.

Handler Reports

§ 1049.30 Reports of receipts and utilization.

On or before the 8th day after the end of each month, each handler shall report for such month to the market administrator, in the detail and on the forms prescribed by the market administrator, as follows:

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

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

(2) [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 § 1049.40 (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 § 1049.9 (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.

§ 1049.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1049.9 (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 § 1049.76(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.

§ 1049.32 Other reports.

(a) On or before the day prior to diverting milk pursuant to § 1049.13, each handler shall notify the market administrator of his intention to divert such milk, the date or dates of such diversion, and the plant to which such milk is to be diverted.

(b) In addition to the reports required pursuant to paragraph (a) of this section and §§ 1049.30 and 1049.31, 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

§ 1049.40 Classes of utilization.

Except as provided in § 1049.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1049.30 shall be classified as follows:

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

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

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

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

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

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

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

(4) Used to produce:

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

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

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

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

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

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

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

(1) Used to produce:

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

(ii) Butter;

(iii) Any milk product in dry form;

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

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

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

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

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

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

(5) In skim milk in any modified fluid milk product that is in excess of the quantity of skim milk in such product that was included within the fluid milk product definition pursuant to § 1049.15; and

(6) In shrinkage assigned pursuant to § 1049.41(a) to the receipts specified in § 1049.41(a)(2) and in shrinkage specified in § 1049.41 (b) and (c).

§ 1049.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1049.30, 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 bulk fluid form;

(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 diverted to such plant from another pool 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 2 percent;

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

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

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

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

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

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1049.9(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.

§ 1049.42 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 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 § 1049.44(a)(12) and the corresponding step of § 1049.44(b);

(2) If the transferor-plant or divertor-plant received during the month other source milk to be allocated pursuant to § 1049.44(a)(7) or the corresponding step of § 1049.44(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 § 1049.44(a) (11) or (12) or the corresponding steps of § 1049.44 (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 utlization 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 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 § 1049.40.

(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 § 1049.30 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.

§ 1049.43 General classification rules.

In determining the classification of producer milk pursuant to § 1049.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical

and other obvious errors all reports filed pursuant to § 1049.30 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 § 1049.9(b) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1049.40, 1049.41, and 1049.42;

(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 § 1049.9(b) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1049.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1049.9(a) for each of his pool plants separately and of each handler described in § 1049.9(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 § 1049.41(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 § 1049.40(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 § 1049.40(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 § 1049.40(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 § 1049.40(b)(1) that was not subtracted pursuant to paragraph (a)(4), (5), and (6) of this section;

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

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

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

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

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

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

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

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

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

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

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

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

(9) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 1049.40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to paragraph (a)(5) and (7)(i) of this section;

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

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

and (8) (i) and (ii) of this section and that were not offset by transfers or diversions of fluid milk products to the same unregulated supply plant from which fluid milk products to be allocated at this step were received:

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

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

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

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

(*a*) The estimated utilization of skim milk of all handlers in each class as announced for the month pursuant to § 1049.45(a); or

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

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

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

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

(13) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products and bulk fluid cream products from another pool plant according to the classification of such products pursuant to § 1049.42(a); and

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

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

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

§ 1049.45 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 § 1049.44(a)(12) and the corresponding step of § 1049.44(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 § 1049.44 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, upon request by such association, the percentage of the milk caused to be delivered by the cooperative association or its members which was utilized in each class at each pool plant receiving such milk. For the purpose of this report, the milk so received shall be allocated to each class at each pool plant in the same ratio as all producer milk received at such plant during the month.

Class Prices

§ 1049.50 Class prices.

Subject to the provisions of § 1049.52, 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 $1.47.

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

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

§ 1049.51 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.

§ 1049.52 Plant location adjustments for handlers.

(a) For producer milk which is received at a pool plant located outside the area for which zero location adjustment is specified in paragraph (a)(1)(i) of this section, which milk 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 § 1049.50(a) shall be reduced on the basis of the applicable amount or rate for the location of such plant pursuant to paragraph (a) (1) or (2) of this section, respectively. For the purpose of this section and § 1049.75, the distances to be computed shall be on the basis of the shortest hard-surfaced highway distances as determined by the market administrator:

(1) At any plant located within:

	Rate of adjustment per hundredweight (Cents)
(i) The State of Ohio or any Indiana county not specifically named in subdivisions (ii) through (iv) of this subparagraph	0
(ii) Any of the Indiana counties of: Adams, Allen, Blackford, Cass, Carroll, De Kalb, Huntington, Jay, La Grange, Miami, Noble, Steuben, Wabash, Wells, White, Whitley	4
(iii) Any of the Indiana counties of: Benton, Elkhart, Fulton, Jasper, Kosciusko, Marshall, Newton, Pulaski, St. Joseph, and Berrien and Cass Counties, Mich	8
(iv) Any of the Indiana counties of: Lake, La Porte, Porter, Starke	12

(2) For any plant at a location outside the territory specified in the preceding paragraph (a)(1) of this section, the applicable adjustment rate per hundredweight shall be based on the shortest highway distance between the plant and the nearest of the Monument Circle, Indianapolis, Ind., or the main post offices of Fort Wayne, South Bend, or Valparaiso, Ind., and shall be 1.5 cents for each 10 miles or fraction thereof from such point plus the amount of the location adjustment pursuant to paragraph (a)(1) of this section applicable at the respective point.

(b) For the purpose of calculating adjustments pursuant to this section, transfers between pool plants shall be assigned Class I disposition at the transferee-plant, in excess of the receipts at such plant from producers and the volume assigned as Class I to receipts from other order plants and unregulated supply plants, such assignment to be made first to transferor-plants at which no location adjustment 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.

§ 1049.53 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.

§ 1049.54 Equivalent price.

If for any reason a price quotation or factor required by this part for computing class prices or for other purposes is not available in the manner described, the market administrator shall use a price or factor determined by the Secretary to be equivalent to the price or factor which is required.

UNIFORM PRICE

§ 1049.60 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 §1049.9(b) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1049.44 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 § 1049.44(a)(14) and the corresponding step of § 1049.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1049.74, 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 § 1049.44 (a)(9) and the corresponding step of § 1049.44(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 § 1049.44(a)(7) (i) through (iv) and the corresponding step of § 1049.44 (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 § 1049.44(a)(7) (v) and (vi) and the corresponding step of § 1049.44 (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 § 1049.44(a)(11) and the corresponding step of § 1049.44(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.

§ 1049.61 Computation of uniform price (including weighted average 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 § 1049.60 for all handlers who filed the reports prescribed by § 1049.30 for the month and who made the payments pursuant to § 1049.71 for the preceding month;

(b) Add an amount equal to the total value of the location adjustments computed pursuant to § 1049.75;

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

(d) Add an amount equal to 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 § 1049.60(f);

(f) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the "weighted average price", and, except for the months specified below, shall be the "uniform price" for milk received from producers;

(g) For the months specified in paragraphs (h) and (i) of this section, subtract from the amount resulting from the computations pursuant to paragraphs (a) through (d) of this section an amount computed by multiplying the hundredweight of milk specified in paragraph (e)(2) of this section by the weighted average price;

(h) Subtract for each month of April through July the amount obtained by multiplying the hundredweight of producer milk included in these computations by 20 cents. The amount so subtracted, and the interest subsequently earned thereon (less any money not

available for crediting under this paragraph because of insufficient payment by a handler to the producer-settlement fund) shall be credited to the producer settlement fund and remain as an obligated amount until disbursed pursuant to paragraph (i) of this section;

(i) Add for the month of September one-fourth of the total money that has been credited to the producer-settlement fund pursuant to paragraph (h) of this section as of the eighth day of the following month. Similarly, for the months of October and November, add one-third and one-half, respectively, of the remainder that has been so credited. For the month of December, add the remainder of the money credited to the producer-settlement fund pursuant to paragraph (h) of this section;

(j) Divide the resulting sum by the total hundredweight of producer milk included in these computations; and

(k) 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.

§ 1049.62 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 14th day after the end of each month the uniform price for such month.

PAYMENTS FOR MILK

§ 1049.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" which shall function as follows:

(a) All payments made by handlers pursuant to §§ 1049.71, 1049.76, 1049.77, and 1049.78 shall be deposited in such fund and from which shall be made all payments pursuant to §§ 1049.72, 1049.77, and 1049.78, except that any payments due to any handler shall be offset by any payments due from such handler; and

(b) All amounts subtracted pursuant to § 1049.61(h) shall be deposited in this fund and set aside as an obligated balance until withdrawn to effectuate § 1049.73 in accordance with the requirements of § 1049.61(i).

§ 1049.71 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 § 1049.60.

(2) The sum of:

(i) The value at the uniform price, as adjusted pursuant to § 1049.75, 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 § 1049.60(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.

§ 1049.72 Payments from the producer-settlement fund.

On or before the 16th 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 § 1049.71(a)(2) exceeds the amount computed pursuant to § 1049.71(a)(1). If the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the necessary funds become available.

§ 1049.73 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 18th day after the end of each month, for each hundredweight of producer milk received during such month, an amount computed at not less than the uniform price as adjusted pursuant to §§ 1049.74, 1049.75 and 1049.86, less any payment made pursuant to paragraph (a)(1) of this section. If by such date the handler has not received full payment from the market administrator pursuant to § 1049.72 for such month, he may reduce pro rata his payments to producers by not more than the amount of such underpayment. Payment to producers shall be completed thereafter not later than the date for making payments pursuant to this paragraph next following receipt of the balance due from the market administrator.

(b) Each handler shall make payment to the 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 16th day after the end of each month for milk received during such month.

(c) Each handler shall pay to each cooperative association, on or before the 10th day of the following month, for milk the handler receives during the month from a pool plant operated by such association, not less than the minimum prices for milk in each class, as adjusted by the butterfat differential specified in § 1049.74, that are applicable at the location of the handler's pool plant.

(d) In making payments for producer milk pursuant to this section, each handler shall furnish each producer or cooperative association from whom he has received milk a supporting statement in such form that it may be retained by the recipient which shall show:

(1) The month and identity 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 this order;

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

(5) The amount, or the rate per hundredweight, and nature of each deduction claimed by the handler; and

(6) The net amount of payment to such producer or cooperative association.

§ 1049.74 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.

§ 1049.75 Plant location adjustments for producers and on nonpool milk.

(a) The uniform price for producer milk received or which is deemed to have been received at a pool plant shall be reduced according to the location of the pool plant at the rates set forth in § 1049.52(a); and

(b) For purposes of computations pursuant to §§ 1049.71 and 1049.72 the weighted average price shall be adjusted at the rates set forth in § 1049.52 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.

§ 1049.76 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 §§ 1049.30(b) and 1049.31(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 § 1049.60 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 subparagraph (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 § 1049.60 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 § 1049.60 for such handler shall include, in lieu of the value of other source milk specified in § 1049.60(f) less the value of such other source milk specified in § 1049.71(a)(2)(ii), a value of milk determined pursuant to § 1049.60 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 § 1049.7(b), subject to the following conditions:

(*a*) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1049.30(b) and 1049.31(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 § 1049.60 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 § 1049.74, 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 § 1049.74, 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.

§ 1049.77 Adjustment of accounts.

Whenever verification by the market administrator of reports or payments 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.

§ 1049.78 Charges on overdue accounts.

Any unpaid obligation of a handler pursuant to § 1049.71, 1049.76, 1049.77(a), 1049.78, 1049.85, or 1049.86(a) shall be increased three-fourths of 1 percent on the sixth day following the date such obligation is due and on the same day of each succeeding month until such obligation is paid.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

§ 1049.85 Assessment for order administration.

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

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

(b) Other source milk allocated to Class I pursuant to § 1049.44(a)(7) and (11) and the corresponding steps of § 1049.44(b), except such other source milk that is excluded from the computations pursuant to § 1049.60(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 § 1049.76(a)(2).

§ 1049.86 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 § 1049.73 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 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.

ADVERTISING AND PROMOTION PROGRAM

§ 1049.110 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 § 1049.121(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.

§ 1049.111 Composition of the Agency.

Each cooperative association or combination of cooperative associations as provided for under § 1049.113(b) with 3 percent or more of the total participating producers (producers who have not requested refunds for the most recent quarter) is authorized one Agency representative plus one additional Agency representative for each additional full 10 percent of the participating member producers it represents. Cooperative associations with less than 3 percent of the total participating producers that have elected not to combine pursuant to § 1049.113(b), and participating producers who are not members of cooperatives are authorized to select from such group, in total, one Agency representative for the first full 3 percent plus one additional Agency representative for each additional full 10 percent that such producers constitute of the total participating producers. For the purpose of the Agency's initial organization, all persons defined as producers shall be considered as participating producers.

§ 1049.112 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.

§ 1049.113 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 respresentatives 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 3 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 § 1049.111 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 3 percent of the producers participating in the advertising and promotion program and who have not elected to combine memberships as provided in paragraph (b) of this section, shall be supervised by the market administrator in the following manner:

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

(2) Following the closing date for nominations, the market administrator shall announce the nominees who are eligible for Agency membership and shall conduct a referendum among the individual producers eligible to vote. 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.

§ 1049.114 Agency operating procedure.

A majority of the Agency members shall constitute a quorum and any action of the Agency shall require a majority of concurring votes of those present and voting, unless the Agency determines that more than a simple majority shall be required.

§ 1049.115 Powers of the Agency.

The Agency is empowered to:

(a) Administer the terms and provisions within the scope of Agency authority pursuant to § 1049.110.

(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 §§ 1049.110 and 1049.117.

§ 1049.116 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 §§ 1049.110 and 1049.117;

(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.

§ 1049.117 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.

§ 1049.118 Limitation of expenditures by the Agency.

(a) Not more than 5 percent of the funds received by the Agency pursuant to § 1049.121(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.

§ 1049.119 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.

§ 1049.120 Procedure for requesting refunds.

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

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

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

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

§ 1049.121 Duties of the market administrator.

Except as specified in § 1049.116, 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 § 1049.113(c);

(b) Set aside the amounts subtracted under § 1049.61(c) 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 § 1049.61(c).

(3) After the end of each calendar quarter, make a refund to each producer who has made application for such refund pursuant to § 1049.120. 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 § 1049.61(c) for such calendar quarter, less the amount of any refund otherwise made to the producer pursuant to paragraph (b)(2) of this section.

(c) Promptly after the effective date of this amending order, and thereafter with respect to new producers, forward to each producer a copy of the provisions of the advertising and promotion program (§§ 1049.110 through 1049.122).

(d) Audit the Agency's records of receipts and disbursements.

§ 1049.122 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 § 1049.70.

PART 1050—MILK IN CENTRAL ILLINOIS MARKETING AREA

Subpart—Order Regulating Handling

GENERAL PROVISIONS

Secs.
1050.1 General provisions.

DEFINITIONS

1050.2 Central Illinois marketing area.
1050.3 Route disposition.
1050.4 [Reserved.]
1050.5 Distributing plant.
1050.6 Supply plant.
1050.7 Pool plant.
1050.8 Nonpool plant.
1050.9 Handler.
1050.10 Producer-handler.
1050.11 [Reserved.]
1050.12 Producer.
1050.13 Producer milk.
1050.14 Other source milk.
1050.15 Fluid milk product.
1050.16 Fluid cream product.
1050.17 Filled milk.
1050.18 Cooperative association.
1050.19 Reload point.

HANDLER REPORTS

1050.30 Reports of receipts and utilization.
1050.31 Payroll reports.
1050.32 Other reports.

CLASSIFICATION OF MILK

1050.40 Classes of utilization.
1050.41 Shrinkage.
1050.42 Classification of transfers and diversions.
1050.43 General classification rules.
1050.44 Classification of producer milk.
1050.45 Market administrator's reports and announcements concerning classification.

CLASS PRICES

1050.50 Class prices.
1050.51 Basic formula price.
1050.52 Plant location adjustments for handlers.
1050.53 Announcement of class prices.
1050.54 Equivalent price.

UNIFORM PRICE

1050.60 Handler's value of milk for computing uniform price.
1050.61 Computation of uniform price (including weighted average price).
1050.62 Announcement of uniform price and butterfat differential.

PAYMENTS FOR MILK

1050.70 Producer-settlement fund.
1050.71 Payments to the producer-settlement fund.
1050.72 Payments from the producer-settlement fund.
1050.73 Payments to producers and to cooperative associations.
1050.74 Butterfat differential.
1050.75 Plant location adjustments for producers and on nonpool milk.
1050.76 Payments by handler operating a partially regulated distributing plant.
1050.77 Adjustment of accounts.
1050.78 Charges on overdue accounts.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

1050.85 Assessment for order administration.
1050.86 Deduction for marketing services.

AUTHORITY: The provisions of this Part 1050 issued under secs. 1–19, 48 Stat. 31, as amended (7 U.S.C. 601–674).

GENERAL PROVISIONS

§ 1050.1 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

§ 1050.2 Central Illinois marketing area.

The "Central Illinois marketing area", hereinafter called the "marketing area", means all the territory within the following counties, all of which are in the State

of Illinois, together with all municipal corporations therein and all institutions owned or operated by the Federal, State, county, or municipal governments located wholly or partially within such counties:

ZONE I

Cass.	McDonough.
Ford.	Peoria.
Fulton.	Stark.
Knox.	Tazewell.
Livingston.	Warren.
Marshall.	Woodford.
Mason.	

ZONE II

Bureau.	Kankakee.
Grundy.	La Salle.
Iroquois.	Putnam.

§ 1050.3 Route disposition.

"Route disposition" means a delivery (including disposition from a plant store or from a distribution point and distribution by a vendor or vending machine) of any fluid milk product classified as Class I milk to a retail or wholesale outlet other than a pool plant or a nonpool plant.

§ 1050.4 [Reserved]

§ 1050.5 Distributing plant.

"Distributing plant" means any plant at which fluid milk products are processed and packaged and from which there is route disposition of Grade A fluid milk products in the marketing area during the month.

§ 1050.6 Supply plant.

"Supply plant" means any plant at which Grade A milk is received from dairy farmers and from which fluid milk products are moved to a distributing plant.

§ 1050.7 Pool plant.

Except as provided in paragraph (d) of this section, "pool plant" means a plant specified in paragraph (a), (b), or (c) of this section. For purposes of determining pool plant status pursuant to this section, Grade A receipts from dairy farmers shall include all quantities of milk diverted pursuant to § 1050.13 (b) and (c) by an operator of a pool plant.

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

(1) Route disposition of fluid milk products, except filled milk, in the marketing area equal to 10 percent or more of its Grade A receipts from dairy farmers, handlers described in § 1050.9(c), and other pool plants, such receipts to be exclusive of fluid milk products (except filled milk) transferred without specific Class II or Class III designation to other pool plants described in this paragraph, or from which there is an average of not less than 7,000 pounds per day of route disposition, except filled milk, in the marketing area; and

(2) Total route disposition of fluid milk products, except filled milk, equal to 50 percent or more of its Grade A receipts from dairy farmers, handlers described in § 1050.9(c), and other pool plants, such receipts to be exclusive of fluid milk products (except filled milk) transferred without specific Class II or Class III designation to other pool plants described in this paragraph, during the months of August through February and 40 percent during all other months.

(b) A supply plant from which during the month an amount equal to 50 percent or more of its receipts of Grade A milk from dairy farmers and handlers described in § 1050.9(c) is moved to and received at a pool plant(s) described in paragraph (a) of this section which have at least 50 percent Class use (not including filled milk) of the total of such supply plant milk and producer milk receipts in the months of August through February and 40 percent in other months.

(c) Any supply plant which qualified pursuant to paragraph (b) of this section in each of the immediately preceding months of September through January shall be a pool plant for the months of February through August unless the operator of such plant notifies the market administrator in writing before the first day of any such month of his intention to withdraw such plant as a pool plant, in which case such plant shall thereafter be a nonpool plant until it again meets the shipping requirements set forth in paragraph (b) of this section.

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

(1) A producer-handler plant;

(2) A distributing plant qualified pursuant to paragraph (a) of this section which meets the requirements of a fully regulated plant pursuant to the provisions of another order issued pursuant to the Act and from which during the month there is a greater quantity of route disposition, except filled milk, in the marketing area regulated by the other order than in the Central Illinois marketing area: *Provided,* That such a distributing plant which was a pool plant under this order in the immediately preceding month shall continue to be subject to all of the provisions of this part until the third consecutive month in which a greater proportion of such route disposition is made in such other marketing area, unless the other order requires regulation of the plant without regard to its qualifying as a pool plant under this order subject to the proviso of this subparagraph;

(3) A distributing plant qualified pursuant to paragraph (a) of this section which meets the requirements of a fully regulated plant pursuant to the provisions of another Federal order and from which during the month there is a greater quantity of route disposition, except filled milk, in the Central Illinois marketing area than in the other marketing area, and such other order which fully regulates the plant does not contain provisions to exempt the plant from regulation even though such plant has greater route disposition in the marketing area of the Central Illinois order; and

(4) Any plant qualified pursuant to paragraph (c) of this section for any portion of the period of Februry through August, inclusive, that the milk at such plant is subject to the classification and pricing provisions of another order issued pursuant to the Act.

§ 1050.8 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 to a pool plant.

§ 1050.9 Handler.

"Handler" means:

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

(b) Any cooperative association with respect to milk of producers diverted for its account pursuant to § 1050.13;

(c) Any cooperative association with respect to milk it receives for its account from the farm of a producer in a tank truck owned and operated by, or under the control of, such association, for delivery to a pool plant(s);

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

(e) A producer-handler;

(f) Any person who operates an other order plant described in § 1050.7(d); and

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

§ 1050.10 Producer-handler.

"Producer-handler" means a person who:

(a) Operates a distributing plant and processes milk from his own farm production and who disposes of all or a portion of such milk as route disposition in the marketing area but who receives no milk from other dairy farmers or fluid milk products from nonpool plants: *Provided,* That the skim milk and butterfat disposed of in the form of fluid milk products designated as Class I milk pursuant to § 1050.40(a) does not exceed the skim milk and butterfat, respectively, in the form of milk from his own farm production, and in the form of fluid milk products from pool plants of other handlers, allowing for inventory derived from such sources; and

(b) Assumes as his personal enterprise and risk the processing and distributing of fluid milk products and the maintenance, care and management of dairy animals and other resources necessary to produce his own farm milk production.

§ 1050.11 [Reserved]

§ 1050.12 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, (2) diverted pursuant to § 1050.13, or (3) accounted for by a cooperative association pursuant to § 1050.13(b).

(b) "Producer" shall not include:

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

(2) Any person with respect to milk produced by him which is diverted to a pool plant from an other order plant if the other order designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to § 1050.44(a)(8)(iii) and the corresponding step of § 1050.44(b); and

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

§ 1050.13 Producer milk.

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

(a) Received at a pool plant from producers or from a handler described in § 1050.9(c);

(b) Represented by the difference between the quantity of milk received by a handler described in § 1050.9(c) at producers' farms and the quantity of such milk delivered to pool plants. For the purposes of §§ 1050.52 and 1050.75, such milk shall be deemed to have been received by such handler at the pool plant to which all other producer milk in the same tank truck was delivered;

(c) Diverted by a handler from a pool plant for the account of the plant operator to another pool plant(s) for not more days of production of such producer's milk than is physically received at a pool plant(s) from which diverted. For pricing purposes such diverted milk shall be deemed to be received by the diverting handler at the location of the plant to which diverted;

(d) Diverted from a pool plant to a nonpool plant that is not a producer-handler plant, subject to the conditions of this paragraph. For pricing purposes, milk so diverted shall be deemed to be received at the plant from which diverted, unless the plant to which the milk is diverted is located more than 110 miles from the city hall in Peoria, Ill. (by shortest highway distance as determined by the market administrator) in which case the milk shall be deemed to be received by the diverting handler at the location of the plant to which diverted:

(1) During May, June and July the operator of a pool plant or a cooperative association may divert the milk production of a producer on any number of days;

(2) Subject to the conditions set forth in paragraph (d)(4) of this section, during the months of August through April the operator of a pool plant may divert the milk of a producer for not more days of production of such producer's milk than it is physically received at the pool plant from which diverted: *Provided*, That the total quantity of producer milk diverted does not exceed 35 percent of the physical receipts of producer milk at the handler's pool plant during the month, exclusive of milk of producers who are members of a cooperative association that is diverting milk and the milk of other producers that is diverted pursuant to paragraph (d)(3) of this section;

(3) Subject to the conditions set forth in paragraph (d)(4) of this section, during the months of August through April a cooperative association may divert the milk of producers for not more days of production of each producer's milk than is physically received at a pool plant: *Provided*, That the total quantity of producer milk does not exceed 35 percent of (i) its member milk physically received at pool plants during such month and (ii) other producer milk for which the cooperative association is the handler pursuant to § 1050.9(c) during such month;

(4) In the case where a cooperative association has notified the market administrator and the handler in writing prior to the first day of the month that milk of specified member producers will not be diverted by the cooperative and is not to be included in computing the cooperative association's diversion percentage for the month, milk of such producers shall be deducted from the cooperative's total receipts of member milk for the purposes specified in paragraph (c)(3) of this section and added to the total milk receipts included in computing the diversions of the pool plant handler who receives their milk for the purposes specified in paragraph (c)(2) of this section; and

(5) When milk is diverted in excess of the limits specified in paragraph (d)(2) and (3) of this section, eligibility as producer milk under this section shall be forfeited on the excess quantity. In such event the diverting handler shall specify the dairy farmers whose milk is ineligible as producer milk. If a handler fails to designate such dairy farmers whose milk is ineligible, producer milk status shall be forfeited with respect to all milk diverted to nonpool plants by such handler.

§ 1050.14 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 § 1050.40(b)(1) from any source other than producers, handlers described in § 1050.9(c), or pool plants;

(b) Receipts in packaged form from other plants of products specified in § 1050.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1050.40(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 § 1050.40(b)(1)) for which the handler fails to establish a disposition.

§ 1050.15 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 § 1050.40 (b) or (c)(1) (i) through (v) if it contains by weight at least 80 percent water and 6.5 percent nonfat milk solids and less than 9 percent butterfat and 20 percent total solids.

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

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

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

§ 1050.16 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.

§ 1050.17 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).

§ 1050.18 Cooperative association.

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

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

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

§ 1050.19 Reload point.

"Reload point" means a location at which facilities approved by a duly constituted health authority, only for the transfer of milk from one tank truck to another and for the washing of tank trucks and at which milk moved from the farm in a tank truck is commingled in a tank truck with milk from other tank trucks before entering a milk plant: *Provided,* That reloading facilities on the premises of a plant having equipment for the receiving, cooling, storing and processing of milk, which equipment is in current use during the month, shall be considered a supply plant rather than a reload point.

HANDLER REPORTS

§ 1050.30 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) Receipts of milk from handlers described in § 1050.9(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 § 1050.40(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 § 1050.9(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.

§ 1050.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1050.9 (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 § 1050.76(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.

§ 1050.32 Other reports.

(a) Not later than the 7th day after the end of the month, each handler operating a pool plant shall report to the market administrator, for each of his pool plants separately, the name and address of each producer from whom milk was received during the month with statements showing dates on which such producer started shipping and the date on which milk shipments stopped.

(b) In addition to the reports required pursuant to §§ 1050.30 and 1050.31 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

§ 1050.40 Classes of utilization.

Except as provided in § 1050.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1050.30 shall be classified as follows:

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

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

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

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

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

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

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

(4) Used to produce:

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

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

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

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

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

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

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

(1) Used to produce:

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

(ii) Butter;

(iii) Any milk product in dry form;

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

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

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

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

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

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

(5) In skim milk in any modified fluid milk product that is in excess of the quantity of skim milk in such product that was included within the fluid milk product definition pursuant to § 1050.15; and

(6) In shrinkage assigned pursuant to § 1050.41(a) to the receipts specified in § 1050.41(a)(2) and in shrinkage specified in § 1050.41 (b) and (c).

§ 1050.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1050.30, 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 bulk fluid form;

(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 § 1050.9(c));

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1050.9(c) and in milk diverted to such plant from another pool plant, except that, in either case, if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be 2 percent;

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

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

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

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

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

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1050.9 (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.

§ 1050.42 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 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 § 1050.44(a)(12) and the corresponding step of § 1050.44(b);

(2) If the transferor-plant or divertor-plant received during the month other source milk to be allocated pursuant to § 1050.44(a)(7) or the corresponding step of § 1050.44(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 § 1050.44(a) (11) or (12) or the corresponding steps of § 1050.44(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 § 1050.40.

(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 § 1050.30 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 transfereeplant, 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.

§ 1050.43 General classification rules.

In determining the classification of producer milk pursuant to § 1050.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1050.30 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 § 1050.9 (b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1050.40, 1050.41, and 1050.42;

(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 § 1050.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1050.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1050.9(a) for each of his pool plants separately and of each handler described in § 1050.9 (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 § 1050.41 (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 § 1050.40(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 § 1050.40(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 § 1050.40(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 § 1050.40(b) (1) that was not subtracted pursuant to paragraph (a) (4), (5), and (6) of this section;

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

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

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

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

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

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

(i) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a) (2) and (7) (v) of this section for which the handler requests a classification other

than Class I, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

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

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

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

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

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

(9) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 1050.40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to paragraph (a)(5) and (7)(i) of this section;

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

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

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

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

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

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

(*a*) The estimated utilization of skim milk of all handlers in each class as announced for the month pursuant to § 1050.45(a); or

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

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

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

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

(13) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products and bulk fluid cream prod-

ucts from another pool plant according to the classification of such products pursuant to § 1050.42(a); and

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

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

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

§ 1050.45 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 § 1050.44(a)(12) and the corresponding step of § 1050.44(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 § 1050.44 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 class utilization of producer milk received by each handler from a cooperative association or from members of the association. For the purpose of this report, the milk caused to be so delivered by an association shall be prorated to each class in the proportion that the total receipts of milk received from producers by such handler were used in each class.

CLASS PRICES

§ 1050.50 Class prices.

Subject to the provisions of § 1050.52, 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 $1.39.

(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.

§ 1050.51 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.

§ 1050.52 Plant location adjustments for handlers.

(a) The Class I price for producer milk at a plant that is outside Zone I shall be adjusted as follows:

(1) At a plant in Zone II or in the Illinois counties of Henry and Mercer, the Class I price shall be decreased 5 cents; and

(2) At a plant located outside the State of Illinois, or in the State of Illinois but north of the northernmost boundaries of the counties of Mercer, Henry, Bureau, La Salle, Grundy, and Kankakee the Class I price shall be reduced 7.5 cents if such plant is 50 or more miles by the shortest highway distance, as determined by the market administrator from the City Hall in Peoria, Ill., plus an additional 1.5 cents for each 10 miles or fraction thereof that such distance exceeds 60 miles.

(b) For purposes of calculating such adjustment, transfers between pool plants shall be assigned Class I disposition at the transferee-plant only to the extent that 105 percent of Class I disposition at the transferee-plant exceeds the sum of receipts at such plant from producers and handlers described in § 1050.9(c), and the volume assigned as Class I to receipts from other order plants and unregulated supply plants, such assignment to be made first to transferor-plants at which no location adjustment credit is applicable and then in sequence beginning with the plant at which the least location adjustment would apply.

(c) The Class I price applicable to other source milk shall be adjusted at the 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.

§ 1050.53 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.

§ 1050.54 Equivalent price.

If for any reason a price quotation required by this part for computing class prices or for other purposes is not available in the manner described, the market administrator shall use a price determined by the Secretary to be equivalent to the price which is required.

UNIFORM PRICE

§ 1050.60 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 § 1050.9 (b) and (c) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1050.44 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 § 1050.44(a)(14) and the corresponding step of § 1050.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1050.74, 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 § 1050.44(a)(9) and the corresponding step of § 1050.44(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 § 1050.44(a)(7) (i) through (iv) and the corresponding step of § 1050.44 (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 § 1050.44(a)(7) (v) and

(vi) and the corresponding step of § 1050.44(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 § 1050.44(a)(11) and the corresponding step of § 1050.44(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 § 1050.40(b) that was in the plant's inventory at the end of the preceding month and classified as Class I milk.

§ 1050.61 Computation of uniform price (including weighted average 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 at plants at which no location adjustment pursuant to § 1050.52 is applicable as follows:

(a) Combine into one total the values computed pursuant to § 1050.60 for all handlers who filed the reports prescribed by § 1050.30 for the month and who made the payments pursuant to § 1050.71 for the preceding month;

(b) Add an amount equal to the sum of the location and zone adjustments computed pursuant to § 1050.75;

(c) Add an amount equal to 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 § 1050.60(f);

(e) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the "weighted average price," and, except for the months specified below, shall be the "uniform price" for milk received from producers;

(f) For the months specified in paragraphs (g) and (h) of this section, subtract from the amount resulting from the computations pursuant to paragraphs (a) through (c) of this section an amount computed by multiplying the hundredweight of milk specified in paragraph (d)(2) of this section by the weighted averaged price;

(g) Subtract in the case of milk delivered during each of the months of March and July an amount equal to 15 cents per hundredweight and during each of the months of April, May, and June an amount equal to 25 cents per hundredweight of producer milk specified in paragraph (d)(1) of this section;

(h) Add in the case of milk delivered during each of the months of September and December 20 percent and during each of the months of October and November 30 percent of the total amount subtracted pursuant to paragraph (g) of this section;

(i) Divide the resulting sum by the total hundredweight of producer milk included in these computations; and

(j) 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.

§ 1050.62 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

§ 1050.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund," which shall function as follows:

(a) All payments made by handlers pursuant to §§ 1050.71, 1050.76, and 1050.77 shall be deposited in such fund and from which shall be made all payments pursuant to §§ 1050.72 and 1050.77: *Provided,* That any payments due to any handler shall be offset by any payments due from such handler; and

(b) All amounts subtracted pursuant to § 1050.61(g) shall be deposited in this fund and set aside as an obligated balance until withdrawn to effectuate § 1050.73 in accordance with the requirements of § 1050.61(h).

§ 1050.71 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 § 1050.60.

(2) The sum of:

(i) The value at the uniform price, as adjusted pursuant to § 1050.75, of such handler's receipts of producer milk; and

(ii) The value at the weighted average price applicable at the location of the plant from which received of other source milk for which a value is computed pursuant to § 1050.60(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.

§ 1050.72 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 § 1050.71(a)(2) exceeds the amount computed pursuant to § 1050.71(a)(1). The market administrator shall offset any payment due any handler against payments due from such handler.

§ 1050.73 Payments to producers and to cooperative associations.

(a) On or before the 20th day of the following month, each handler shall make payment to each producer for milk received from such producer during such month:

(1) An amount equal to not less than the uniform price, as adjusted pursuant to §§ 1050.74 and 1050.75, multiplied by the hundredweight of milk received from such producer during the month, subject to the following adjustments:

(i) Less deductions for marketing services made pursuant to § 1050.86;

(ii) Plus or minus adjustments for errors made in previous payments made to such producer; and

(iii) Less proper deductions authorized in writing by such producer: *Provided,* That, if by such date, such handler has not received full payment from the market administrator pursuant to § 1050.72 for such month, he may reduce pro rata his payments to producers by not more than the amount of such underpayment. Payments to producers shall be completed thereafter not later than the date for making payments pursuant to this paragraph next following after the receipt of the balance due from the market administrator;

(b) Payments required in paragraph (a) of this section for milk caused to be delivered to such handler by a cooperative association qualified under § 1050.18 shall be made to such association, or its duly authorized agent, which the market administrator determines is authorized by such producers to collect payment for

their milk and which has so requested the handler in writing. Such handler shall, on or before the 18th day of the following month, pay the cooperative association for milk received during the month from producers at the direction of such association as determined by the market administrator an amount equal to not less than the amounts due such producers as determined pursuant to paragraph (a) of this section, less any deductions authorized in writing by such association: *Provided*, That the association has provided the handler with a written 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 18th day after the end of each month, each handler shall pay to each cooperative association for milk the handler received at his pool plant from a pool plant(s) operated by such association, not less than the minimum prices for milk in each class, as adjusted by the butterfat differential specified in § 1050.74, that are applicable at the location of the handler's pool plant;

(d) On or before the 18th day of the following month, each handler, in his capacity as operator of a pool plant, who receives milk for which a cooperative association is the handler pursuant to § 1050.9(c), including the milk of producers who are not members of such association, and who the market administrator determines have authorized such cooperative association to collect payments for their milk, shall pay such cooperative association for such milk at the uniform price as adjusted pursuant to §§ 1050.74 and 1050.75; and

(e) Each handler who received milk during the month from producers for which payment is to be made to a cooperative association pursuant to paragraph (b) of this section shall report on or before the 7th day after the end of the month to such cooperative association for each such producer on forms approved by the market administrator:

(1) The total pounds of milk received from each producer together with the butterfat content of such milk; and

(2) The amount or rate and nature of any deductions authorized by a cooperative association.

§ 1050.74 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.

§ 1050.75 Plant location adjustments for producers and on nonpool milk.

(a) In making payments pursuant to § 1050.73, the uniform price per hundredweight for producer milk received at a plant outside Zone I shall be adjusted according to the location of the plant at the rates set forth in § 1050.52.

(b) For purposes of computation pursuant to §§ 1050.71 and 1050.72, the weighted average price shall be adjusted in the same manner as the uniform price is adjusted pursuant to paragraph (a) of this section for the location of the nonpool plant from which the milk was received, except that the adjusted weighted average price shall not be less than the Class III price.

§ 1050.76 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 §§ 1050.30(b) and 1050.31(b) the information necessary for making the computations, such handler may elect to pay in lieu of such payment the amount computed pursuant to paragraph (b) of this section:

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

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

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

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

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

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

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

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

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

(1) Determine the value that would have been computed pursuant to § 1050.60 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 § 1050.60 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 § 1050.60 for such handler shall include, in lieu of the value of other source milk specified in § 1050.60(f) less the value of such other source milk specified in § 1050.71(a)(2)(ii), a value of milk determined pursuant to § 1050.60 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 § 1050.7 (b) and (c), subject to the following conditions:

(*a*) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1050.30 (b), and 1050.31(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 § 1050.60 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 § 1050.74, 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 § 1050.74, 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.

§ 1050.77 Adjustment of accounts.

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

§ 1050.78 Charges on overdue accounts.

Any unpaid obligation of a handler pursuant to §§ 1050.71, 1050.85, or 1050.86 shall be increased one-half of 1 percent for each month or portion thereof that such payment is overdue.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

§ 1050.85 Assessment for order administration.

As his pro rata share of the expense of administration of the order, each handler (excluding a handler described in § 1050.9(c) with respect to milk delivered to pool plants) shall pay to the market administrator on or before the 20th 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 § 1050.44(a) (7) and (11) and the corresponding steps of § 1050.44(b), except such other source milk that is excluded from the computations pursuant to § 1050.60 (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 § 1050.76(a)(2).

§ 1050.86 Deduction for marketing services.

(a) *Deduction for marketing services.* Except as set forth in paragraph (b) of this section, each handler in making payments to producers, pursuant to § 1050.73, shall deduct 6 cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to all milk received by such handler from producers (excluding such handler's own production) during the month, and shall pay such deductions to the market administrator on or before the 20th day after the end of such month. Such monies shall be used by the market administrator to verify weights, samples, and tests of milk received from such producers and to provide them with market information. Such services shall be performed in whole or in part by the market administrator or by an agent engaged by and responsible to him.

(b) *Producers cooperative 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, in lieu of the deduction specified in paragraph (a) of this section, shall make such marketing service deductions as are authorized by producer-members, and pay the money so deducted to the cooperative association on or before the 20th day after the end of the month.

PART 1062—MILK IN ST. LOUIS-OZARKS MARKETING AREA

Subpart—Order Regulating Handling

GENERAL PROVISIONS

AUTHORITY.—The provisions of this Part 1062 issued under secs. 1–19, 48 Stat. 31, as amended; (7 U.S.C. 601–674).

GENERAL PROVISIONS

§ 1062.1 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

§ 1062.2 St. Louis-Ozarks marketing area.

"St. Louis-Ozarks marketing area", hereinafter called the marketing area, means all the territory within the designated military reservations, the corporate limits of the cities and the counties enumerated below:

ZONE I

(MISSOURI COUNTIES)

Barry.
Christian.
Crawford.
Douglas.
Franklin.
Greene.
Howell.
Jefferson.
Laclede.
Lawrence.
Ozark.
St. Charles.
St. Louis.
Stone.
Taney.
Warren.
Webster.
Washington.
Wright.

and the city of St. Louis, Mo., Fort Leonard Wood Military Reservation in Missouri, and the territory within Scott Military Reservation. East St. Louis, Centerville, Canteen, and Stites Townships, and the city of Belleville, all in St. Clair County, Ill.

ZONE II

(MISSOURI COUNTIES)

Cape Girardeau.	Perry.
Bollinger.	Ste. Genevieve.
St. Francois.	

ZONE III

(ARKANSAS COUNTIES)

Benton.	Marion.
Boone.	Washington.

§ 1062.3 Route disposition.

"Route disposition" means any delivery of a fluid milk product classified as Class I milk to a retail or wholesale outlet (including any delivery through a vendor, or a sale in packaged form from a plant or plant store) except a delivery to another plant.

§ 1062.4 [Reserved]

§ 1062.5 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 during the month route disposition is made in the marketing area.

§ 1062.6 Supply plant.

"Supply plant" means a plant which qualifies as a pool plant pursuant to § 1062.7(c) or from which fluid milk products, acceptable to a duly constituted health authority for distribution under a Grade A label, are shipped during the month to and physically received at a distributing plant.

§ 1062.7 Pool plant.

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

(a) Any distributing plant which:

(1) Has during the month route disposition and disposition of packaged fluid milk products to pool distributing plants, excluding in either case filled milk, which, after subtraction of the quantity of packaged fluid milk products, except filled milk, received from other pool plants, is equal to at least 50 percent of such plant's total receipts of Grade A fluid milk products from dairy farmers (including milk diverted by the plant operator), supply plants and handlers described in § 1062.9(c), exclusive of packaged fluid milk products, except filled milk, received from other pool plants, and has route disposition in the marketing area in an amount equal to 10 percent or more of such receipts or an average of not less than 7,000 pounds per day, whichever is less; or

(2) Qualified as a pool plant in the immediately preceding month on the basis of the performance standards described in paragraph (a)(1) of this section.

(b) Any supply plant from which during the month 50 percent or more of the Grade A milk received from dairy farmers and handlers described in § 1062.9(c) is shipped to a plant(s) described in paragraph (a) of this section. Any supply plant which has shipped to a plant(s) described in paragraph (a) of this section the required percentages of its receipts during each of the months of September through February shall be designated a pool plant in each of the following months of March through August unless the plant operator requests the market administrator in writing that such plant not be a pool plant. Such nonpool plant status shall be effective the first month following such notice and thereafter until the plant again qualifies as a pool plant on the basis of shipments.

(c) Any plant which is operated by or under contract to a cooperative association, or a federation of cooperatives, if:

(1) The operator of such plant(s) requests pool status, and 50 percent or more of all the Grade A milk from farms of the member producers of such cooperative or federation including milk delivered by it as a handler described in § 1062.9(c) has been shipped to and physically received at pool distributing plants during the current month or the previous 12-month period ending with the current month, either directly from producer member farms or by transfer from such association plant(s);

(2) Such a plant does not qualify during the month as a "pool plant" under another market pool order issued pursuant to the Act by making shipments of milk to plants which qualify as "pool plants" under such other order; or

(3) Such plant meets the requirements of paragraph (c)(2) of this section and met the requirements of paragraph (c)(1) of this section in the preceding month.

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

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

(2) A distributing plant which meets the pooling requirements of another Federal order and from which route disposition, except filled milk, during the month in such other Federal order marketing area is greater than 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 of the provisions of this part until the third consecutive month in which a greater proportion of such route disposition is made in such other marketing area unless, notwithstanding the provisions of this subparagraph, it is regulated under such other order;

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

(4) A supply plant meeting the requirements of paragraph (b) of this section which also meets the pooling requirements of another Federal order and from which greater qualifying shipments are made during the month to plants regulated under such other order than are made to plants regulated under this part, except during the months of March through August if such plant retains automatic pooling status under this part.

§ 1062.8 Nonpool plant.

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

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

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

(c) "Partially regulated distributing plant" means a nonpool plant that is neither an other order plant, a producer-handler plant, nor a governmental agency plant, which has route disposition of fluid milk products 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, a producer-handler plant, nor a governmental agency plant, from which fluid milk products are shipped to a pool plant; and

(e) "Governmental agency plant" means a plant operated by a government agency.

§ 1062.9 Handler.

"Handler" means:

(a) Any person who operates a pool plant;

(b) Any cooperative association with respect to milk of its member producers which is diverted from a pool plant of another handler pursuant to § 1062.13 for the account of such association;

(c) Any cooperative association with respect to producer milk transferred from the producer's farm tank to a tank truck owned and operated by or under contract to such association for delivery to a pool plant if prior to delivery the operator of the pool plant gives notice in writing to both the market administrator and the association of his intention to purchase such milk on a basis of weights and butterfat tests other than as determined from farm tank measurements and farm tank samples;

(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 § 1062.7(d).

§ 1062.10 Producer-handler.

"Producer-handler" means any person who is both a dairy farmer and the operator of a distributing plant, and who meets the qualifications specified in paragraphs (a) and (b) of this section:

(a) Receipts of fluid milk products at his plant are solely milk of his own production, fluid milk products from pool plants of other handlers, packaged fluid milk products from other order plants, and receipts of nonfluid milk products are used only to fortify fluid milk products; and

(b) The maintenance, care and management of the dairy animals and other resources necessary to produce the milk and the processing, packaging and distribution of the milk are the personal enterprise and the personal risk of such person.

§ 1062.11 [Reserved]

§ 1062.12 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 § 1062.13.

(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 § 1062.44(a)(8)(iii) and the corresponding step of § 1062.44(b); and

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

§ 1062.13 Producer milk.

"Producer milk" means milk produced by producers which is received and accounted for as follows:

(a) By the operator of a pool plant (including a cooperative association) with respect to milk:

(1) Received at the pool plant from producers or from a handler described in § 1062.9(c); and

(2) Diverted by the operator of the pool plant, subject to the conditions of paragraph (c) of this section;

(b) By a cooperative association with respect to milk:

(1) Which it received from producers as a handler described in § 1062.9(b), subject to the conditions of paragraph (c) of this section; and

(2) Which it received from producers as a handler described in § 1062.9(c) and which:

(i) Is delivered to a pool plant of another handler; or

(ii) Is not so delivered and constitutes shrinkage pursuant to § 1062.41(c) or Class I shrinkage; and

(c) Milk may be diverted by the operator of a pool plant or by a cooperative association pursuant to the following conditions with respect to each producer:

(1) By the operator of a pool plant to another pool plant(s) for not more days of production of producer milk than is physically received at the pool plant from which diverted.

(2) By the operator of a pool plant or by a handler described in § 1062.9(b) to a nonpool plant that is not a producer-handler plant on any day during each of the months of March through August and for not more days of production of producer milk than is physically received at pool plants during each of the months of September through February.

(3) For pricing purposes, milk diverted pursuant to paragraph (c)(2) of this section to a plant located more than 120 miles from the city hall in St. Louis or the city hall in Springfield, Mo., whichever is nearer (by the shortest highway distance as determined by the market administrator using the most current issue of the Household Carriers Guide) or milk diverted pursuant to paragraph (c)(1) of this section, shall be deemed to be received by the diverting handler at the location of the plant to which diverted.

(4) For pricing purposes, milk diverted pursuant to paragraph (c)(2) or (3) of this section to a plant located 120 miles or less from the city hall in St. Louis or the city hall in Springfield, Mo., whichever is nearer (by the shortest highway distance as determined by the market administrator using the most current issue of the Household Carriers Guide), shall be deemed to be received at the location of the plant from which diverted.

§ 1062.14 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 § 1062.40(b)(1) from any source other than producers, handlers described in § 1062.9(c), or pool plants;

(b) Receipts in packaged form from other plants of products specified in § 1062.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1062.40(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 § 1062.40(b)(1)) for which the handler fails to establish a disposition.

§ 1062.15 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 § 1062.40 (b) or (c)(1) (i) through (v) if it contains by weight at least 80 percent water and 6.5 percent nonfat milk solids and less than 9 percent butterfat and 20 percent total solids.

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

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

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

§ 1062.16 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.

§ 1062.17 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).

§ 1062.18 Cooperative association.

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

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

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

HANDLER REPORTS

§ 1062.30 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) Receipts of milk from handlers described in § 1062.9(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 § 1062.40 (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 § 1062.9 (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.

§ 1062.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1062.9 (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 § 1062.76 (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.

§ 1062.32 Other reports.

In addition to the reports required pursuant to §§ 1062.30 and 1062.31, 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

§ 1062.40 Classes of utilization.

Except as provided in § 1062.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1062.30 shall be classified as follows:

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

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

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

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

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

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

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

(4) Used to produce:

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

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

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

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

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

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

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

(1) Used to produce:

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

(ii) Butter;

(iii) Any milk product in dry form;

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

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

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

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

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

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

(5) In skim milk in any modified fluid milk product that is in excess of the quantity of skim milk in such product that was included within the fluid milk product definition pursuant to § 1062.15; and

(6) In shrinkage assigned pursuant to § 1062.41 (a) to the receipts specified in § 1062.41 (a) (2) and in shrinkage specified in § 1062.41 (b) and (c).

§ 1062.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1062.30, 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 fluid milk product or a bulk fluid cream product;

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

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant and milk received from a handler described in § 1062.9(c));

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1062.9(c) and in milk diverted to such plant from another pool plant, except that, in either case, if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be 2 percent;

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

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

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

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

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products transferred to other plants

that is not in excess of the respective amounts of skim milk and butterfat to which percentages are applied in paragraph (b) (1), (2), (4), (5), and (6) of this section; and

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1062.9 (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.

§ 1062.42 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 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 § 1062.44(a)(12) and the corresponding step of § 1062.44(b);

(2) If the transferor-plant or divertor-plant received during the month other source milk to be allocated pursuant to § 1062.44(a)(7) or the corresponding step of § 1062.44(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 § 1062.44(a) (11) or (12) or the corresponding steps of § 1062.44(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 § 1062.40.

(c) *Transfers to producer-handlers and transfers and diversions to governmental agency 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 a governmental agency plant shall be classified:

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

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

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

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

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

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

(*a*) The transferor-handler or divertor-handler claims such classification in his report of receipts and utilization filed pursuant to § 1062.30 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 deter-

mines 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.

§ 1062.43 General classification rules.

In determining the classification of producer milk pursuant to § 1062.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1062.30 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 § 1062.9 (b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1062.40, 1062.41, and 1062.42;

(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 § 1062.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1062.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1062.9(a) for each of his pool plants separately and of each handler described in § 1062.9 (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 § 1062.41(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 § 1062.40(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 § 1062.40(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 § 1062.40(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 § 1062.40(b)(1) that was not subtracted pursuant to paragraph (a)(4), (5), and (6) of this section;

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

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

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

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

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

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

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

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

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

(*b*) Subtract from the above result the sum of the pounds of skim milk in receipts at all pool plants of the handler of producer milk, 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 § 1062.40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to paragraph (a)(5) and (7)(i) of this section;

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

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

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

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

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

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

(*a*) The estimated utilization of skim milk of all handlers in each class as announced for the month pursuant to § 1062.45(a); or

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

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

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

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

(13) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products and bulk fluid cream products from another pool plant according to the classification of such products pursuant to § 1062.42(a); and

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

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

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

§ 1062.45 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 § 1062.44(a)(12) and the corresponding step of § 1062.44(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 § 1062.44 on the basis of such report, and, thereafter, any change in such allocation required to correct errors disclosed in the verification of such report. In the case of milk received from an other order market pool plant the classification of such milk shall be the quantities assigned to Class I milk, Class II milk, and Class III milk pursuant to § 1062.44. In the case of milk received from an other order handler pool plant, the market administrator shall report the allocation of skim milk

and butterfat in the same percentage as the market-wide estimate for all handlers pursuant to paragraph (a) of this section.

(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 of each month report to each cooperative association, which so requests, the percentage utilization of milk received from producers or from handlers described in § 1062.9(c) in each class by each handler who in the previous month received milk from members of such cooperative association.

CLASS PRICES

§ 1062.50 Class prices.

Subject to the provisions of § 1062.52, 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.

(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.

§ 1062.51 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.

§ 1062.52 Plant location adjustments for handlers.

For milk received from producers or a handler described in § 1062.9(c) at a pool plant and which is classified as Class I milk or assigned Class I location adjustment credit pursuant to paragraph (f) of this section, the price at such pool plant located:

(a) In Zone I of the marketing area, shall be the price computed pursuant to § 1062.50(a) except as provided in paragraph (d) of this section.

(b) In Zone II of the marketing area, shall be the Zone I price plus a location adjustment of 7 cents.

(c) In Zone III of the marketing area, shall be the Zone I price plus a location adjustment of 17 cents.

(d) In Zone A (the Missouri counties of Barry, Christian, Douglas, Green, Howell, Laclede, Lawrence, Ozark, Stone, Taney, Webster, Wright, and Texas), for any plant which does not dispose of fluid milk products in consumer-type packages and which is qualified as a pool plant pursuant to § 1062.7 (b) or (c) shall be the price pursuant to § 1062.50(a) less 27 cents.

(e) Outside the marketing area and Texas County, Mo., and more than 30 miles from the City Hall, St. Louis, Mo., or the city hall in Springfield, Mo., whichever is nearer, shall be the Class I price applicable in Zone I, less a location adjustment of 1.5 cents for each 10 miles or fraction thereof that such plant is located from the City Hall, St. Louis, Mo., or the city hall in Springfield, Mo., whichever is nearer (the distance to be by shortest hard-surfaced highway as determined by the market administrator).

(f) In the case of transfers between plants, location adjustment shall apply at the transferor-plant with respect to a quantity of the transfer calculated as follows: From total Class I milk utilization at the transferee-plant subtract Class I milk assigned to receipts from other order plants and unregulated supply plants, and 95 percent of the receipts from producers and handlers described in § 1062.9(c), and assign the remaining Class I milk to receipts from other pool plants with plus location adjustment, then to receipts from plants with no location adjustment, and then in sequence to receipts from plants at which the smallest minus adjustments apply.

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

§ 1062.53 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.

§ 1062.54 Equivalent price.

If for any reason a price quotation required by this order for computing class prices or for other purposes is not available in the manner described, the market administrator shall use a price determined by the Secretary to be equivalent to the price which is required.

UNIFORM PRICE

§ 1062.60 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 § 1062.9(b) and (c) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1062.44 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 § 1062.44(a)(14) and the corresponding step of § 1062.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1062.74, 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 § 1062.44 (a)(9) and the corresponding step of § 1062.44(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 § 1062.44(a)(7) (i) through (iv) and the corresponding step of § 1062.44(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 § 1062.44(a)(7) (v) and (vi) and the corresponding step of § 1062.44 (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 § 1062.44(a)(11) and the corresponding step of § 1062.44(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) Add the amounts obtained from multiplying the pounds of skim milk and butterfat in each class that were prorated to receipts of fluid milk products from handler pool other order plants pursuant to § 1062.44(a)(12)(iv) and the corresponding step of § 1062.44(b) by the respective class prices specified in § 1062.50 that are applicable at the location of the plant from which received.

§ 1062.61 Computation of uniform price (including weighted average 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 § 1062.60 for all handlers who filed the reports prescribed by § 1062.30 for the month and who made the payments pursuant to

§§ 1062.71 and 1062.73 for the preceding month;

(b) Deduct the amount of the plus adjustments and add the amount of the minus adjustments, which are applicable pursuant to § 1062.75;

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

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

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

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1062.60 (f) and (g);

(f) Subtract not less than four cents nor more than 5 cents per hundredweight. The result shall be the "weighted average price", and, except for the months specified below, shall be the "uniform price" for milk received from producers;

(g) For the months specified in paragraphs (h) and (i) of this section, subtract from the amount resulting from the computations pursuant to paragraphs (a) through (d) of this section an amount computed by multiplying the hundredweight of milk specified in paragraph (e)(2) of this section by the weighted average price;

(h) From the remainder subtract during each of the months of March and July an amount equal to 15 cents per hundredweight and during each of the months of April, May, and June an amount equal to 25 cents per hundredweight of the total amount of producer milk included in these computations. This amount shall be retained in the producer-settlement fund and disbursed according to the provisions of paragraph (i) of this section;

(i) Add during each of the months of September and December 20 percent and during each of the months of October and November 30 percent of the total amount subtracted pursuant to paragraph (h) of this section;

(j) Divide the resulting sum by the total hundredweight of producer milk included in these computations; and

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

§ 1062.62 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

§ 1062.70 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 §§ 1062.71, 1062.76, and 1062.77 subject to the provisions of § 1062.78 and from which he shall make all payments to handlers pursuant to §§ 1062.72 and 1062.77. The market administrator shall offset the payment due to a handler against payments due from such handler.

§ 1062.71 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 § 1032.60.

(2) The sum of:

(i) The value at the uniform price, as adjusted pursuant to § 1062.75, of such handler's receipts of producer milk, excluding in the case of a handler described in § 1062.9(c) milk it delivered to a pool plant; 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 § 1062.60 (f) and (g) plus in the case of milk received from a handler pool market the amount of the location adjustment at the location of the plant from which received applied to the quantity of Class II and Class III milk reported pursuant to § 1062.45(b) which is in excess of the Class II and Class III milk pursuant to § 1062.60(g), except that for milk received from a handler pool market the value applicable pursuant to this subdivision shall not exceed the value for such quantity calculated pursuant to § 1062.60(g).

(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.

§ 1062.72 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 § 1062.71(a)(2) exceeds the amount computed pursuant to § 1062.71(a)(1). The market administrator shall offset any payment due any handler against payments due from such handler pursuant to §§ 1062.71, 1062.77, 1062.85, and 1062.86. 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.

§ 1062.73 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 the month during which the milk was received, to each producer for whom payment is not made pursuant to paragraph (c) of this section, at not less than the uniform price computed pursuant to § 1062.61 for such producer's deliveries of milk, as adjusted pursuant to §§ 1062.74 and 1062.75, and less the amount of the payment made pursuant to paragraph (b) of this section. If by such date such handler has not received full payment pursuant to § 1062.72, he may reduce his total payments uniformly to all producers by not more than the amount of the reduction in payment by the market administrator. He shall, however, complete such payments pursuant to this paragraph not later than the date for making such payments next following receipt of the balance from the market administrator:

(b) On or before the last day of each month, to each producer to whom payment is not made pursuant to paragraph (c) of this section and who is still delivering Grade A milk to such handler, a partial payment with respect to milk received from him during the first 15 days of such month computed at not less than the Class III price for the preceding month, without deduction for hauling;

(c) On or before the 14th day after the end of each month and on or before the 25th day of each month, in lieu of payments pursuant to paragraphs (a) and (b), respectively, of this section, to a cooperative association which so requests, for milk which is received from members, and for which such association is determined by the market administrator to be authorized to collect payment, an amount equal to the sum of the individual payments otherwise payable to such producers;

(d) Each handler who receives milk for which a cooperative association is the handler described in § 1062.9(c), shall, on or before the second day prior to the date payments are due individual producers, pay such cooperative association for such milk as follows:

(1) A partial payment for milk received during the first 15 days of the month at not less than the amount prescribed in paragraph (b) of this section; and

(2) In making final settlement, the value of such milk at the uniform price as adjusted pursuant to §§ 1062.74 and

1062.75, less payment made pursuant to paragraph (d)(1) of this section;

(e) On or before the 14th day after the end of each month, each handler shall pay to each cooperative association for milk the handler receives from a pool plant(s) operated by such association, not less than the minimum prices for milk in each class, as adjusted by the butterfat differential specified in § 1062.74, that are applicable at the location of the handler's pool plant; and

(f) Each handler who receives milk from producers, payment for which is to be made to a cooperatitve 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 25th 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 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 § 1062.77(c) and (d).

§ 1062.74 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.

§ 1062.75 Plant location adjustments for producers and on nonpool milk.

(a) For producer milk received at pool plants located outside Zone I and more than 30 miles from the St. Louis city hall or the city hall in Springfield, Mo., whichever is nearer, there shall be added or deducted, as the case may be, an adjustment for each such plant for all milk at the rates specified in § 1062.52 (b), (c), and (e); and

(b) For purposes of computations pursuant to §§ 1062.71(a)(2)(ii) and 1062.-72, the "weighted averaged price" shall be adjusted at the rates set forth in § 1062.52 (b), (c), and (e) applicable at the location of the nonpool plant(s) 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.

§ 1062.76 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 §§ 1062.30(b) and 1062.-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 § 1062.60 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 § 1062.60 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 § 1062.60 for such handler shall include, in lieu of the value of other source milk specified in § 1062.60(f) less the value of such other source milk specified in § 1062.71(a)(2)(ii), a value of milk determined pursuant to § 1062.60 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 § 1062.7(b), subject to the following conditions:

(*a*) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1062.30(b) and 1062.31(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 § 1062.60 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 § 1062.74, 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 § 1062.74, 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.

§ 1062.77 Adjustment of accounts.

(a) Whenever verification by the market administrator of reports or payments of any handler discloses error in payments to the producer-settlement fund made pursuant to § 1062.71, the market administrator shall promptly bill such handler for any unpaid amount and such handler shall within 30 days of the date of such billing, make payment to the market administrator of the amount so billed;

(b) Whenever verification discloses that payment is due from the market administrator to any handler pursuant to § 1062.72, the market administrator shall promptly make payment to such handler;

(c) Whenever verification by the market administrator of the payment by a handler to any producer discloses payment to such producer of an amount which is less than is required by this part, the handler shall make up such payment to the producer not later than the time of making payment to producers next following the disclosure; and

(d) Whenever verification by the market administrator of the payment by a handler to any producer discloses that solely through error in computation, payment to such producer was in an amount more than was required to be paid pursuant to § 1062.73, no handler shall be deemed to be in violation of § 1062.73 if he reduces his next payment to such producer following discovery of such error by not more than such overpayment.

§ 1062.78 Charges on overdue accounts.

Any unpaid obligation of a handler pursuant to §§ 1062.71, 1062.77(a), 1062.85, or 1062.86(a) shall be increased one-half of one percent on the first day of the month following after the date such obligation is due and on the first day of each succeeding month until such obligation is paid. Any remittance received by the market administrator postmarked prior to the first of the month shall be considered to have been received when postmarked.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

§ 1062.85 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 2.5 cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to:

(a) Producer milk (including that received from a handler described in § 1062.9(c)) and the handler's own production;

(b) Other source milk allocated to Class I pursuant to § 1062.44(a) (7) and (11) and the corresponding steps of § 1062.44(b), except such other source milk that is excluded from the computations pursuant to § 1062.60 (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 § 1062.76(a)(2).

§ 1062.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler shall deduct 6 cents per hundredweight, or such lesser amount as the Secretary may prescribe, from the payments made to each producer other than himself pursuant to § 1062.73(a) with respect to all milk of such producer received by such handler during the month and shall pay such deductions to the market administrator on or before the 15th day after the end of such month. Such money shall be used by the market administrator to verify weights, samples and tests of milk received from, and to provide market information to such producers. The market administrator may contract with a cooperative association or cooperative associations for the furnishing of the whole or any part of such services; and

(b) In the case of producers for whom a cooperative association is actually performing, as determined by the Secretary, the services set forth in paragraph (a) of this section, each handler shall make such deductions from the payments to be made directly to producers pursuant to § 1062.73(a) 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. When requested by the cooperative association a statement shall be supplied the cooperative association showing for each producer for whom such deduction is made the amount of such deduction, the total delivery of milk, and, unless otherwise previously provided, the butterfat test.

ADVERTISING AND PROMOTION PROGRAM

§ 1062.110 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 § 1062.121(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.

§ 1062.111 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 § 1062.113(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 § 1062.113(b), and participating producers who are not members of cooperatives are authorized to select from such group of participating producers, in total, pursuant to § 1062.113(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 § 1062.113(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.

§ 1062.112 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.

§ 1062.113 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 § 1062.111 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.

§ 1062.114 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.

§ 1062.115 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 § 1062.110;

(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 §§ 1062.110 and 1062.117.

§ 1062.116 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 §§ 1062.110 and 1062.117;

(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.

§ 1062.117 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.

§ 1062.118 Limitation of expenditures by the Agency.

(a) Not more than 5 percent of the funds received by the Agency pursuant to § 1062.121(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.

§ 1062.119 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.

§ 1062.120 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 § 1062.61(d): *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 § 1062.61(d).

§ 1062.121 Duties of the market administrator.

Except as specified in § 1062.116, 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 § 1062.113(c);

(b) Set aside the amounts subtracted under § 1062.61(d) into an advertising

and promotion fund, separately accounted for, from which shall be disbursed:

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

(2) Refund to producers the amounts of mandatory checkoff for advertising and promotion programs required under authority of State law applicable to such producers, but not in amounts that exceed a rate of 5 cents per hundredweight on the volume of milk pooled by any such producer for which deductions were made pursuant to § 1062.61(d).

(3) After the end of each calendar quarter, make a refund to each producer who has made application for such refund pursuant to § 1062.120. 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 § 1062.61(d) for such calendar quarter, less the amount of any refund otherwise made to the producer pursuant to paragraph (b) (2) of this section.

(c) Promptly after the effective date of this amending order, and thereafter with respect to new producers, forward to each producer a copy of the provisions of the advertising and promotion program (§§ 1062.110 through 1062.122).

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

§ 1062.122 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 § 1062.70.

PART 1099—MILK IN PADUCAH, KENTUCKY, MARKETING AREA

Subpart—Order Regulating Handling

GENERAL PROVISIONS

Secs.
1099.1 General provisions.

DEFINITIONS

1099.2 Paducah, Kentucky, marketing area.
1099.3 Route disposition.
1099.4 [Reserved]
1099.5 Distributing plant.
1099.6 Supply plant.
1099.7 Pool plant.
1099.8 Nonpool plant.
1099.9 Handler.
1099.10 Producer-handler.
1099.11 [Reserved]
1099.12 Producer.
1099.13 Producer milk.
1099.14 Other source milk.
1099.15 Fluid milk product.
1099.16 Fluid cream product.
1099.17 Filled milk.
1099.18 Cooperative association.

HANDLER REPORTS

1099.30 Reports of receipts and utilization.
1099.31 Payroll reports.
1099.32 Other reports.

CLASSIFICATION OF MILK

1099.40 Classes of utilization.
1099.41 Shrinkage.
1099.42 Classification of transfers and diversions.
1099.43 General classification rules.
1099.44 Classification of producer milk.
1099.45 Market administrator's reports and announcements concerning classification.

CLASS PRICES

1099.50 Class prices.
1099.51 Basic formula price.
1099.52 Plant location adjustments for handlers.
1099.53 Announcement of class prices.

UNIFORM PRICE

1099.60 Handler's value of milk for computing uniform price.
1099.61 Computation of uniform price (including weighted average price).
1099.62 Announcement of uniform price and butterfat differential.

PAYMENTS FOR MILK

1099.70 Producer-settlement fund.
1099.71 Payments to the producer-settlement fund.
1099.72 Payments from the producer-settlement fund.
1099.73 Payments to producers and to cooperative associations.
1099.74 Butterfat differential.
1099.75 Plant location adjustments for producers and on nonpool milk.
1099.76 Payments by handler operating a partially regulated distributing plant.
1099.77 Adjustment of accounts.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

1099.85 Assessment for order administration.
1099.86 Deduction for marketing services.

AUTHORITY.—The provisions of this Part 1099 issued under secs. 1–19, 48 Stat. 31, as amended (7 U.S.C. 601–674).

GENERAL PROVISIONS

§ 1099.1 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

§ 1099.2 Paducah, Kentucky, marketing area.

The "Paducah, Ky., marketing area," hereinafter called the "marketing area," means all the territory within the counties listed below (except that portion of any of these counties contained in the Fort Campbell military reservation):

KENTUCKY COUNTIES

Ballard.	Hickman.
Caldwell.	Livingston.
Calloway.	Lyon.
Carlisle.	Marshall.
Christian.	McCracken.
Fulton.	Todd.
Graves.	Trigg.

MISSOURI COUNTIES

Mississippi.	Pemiscot.
New Madrid.	Scott.

§ 1099.3 Route disposition.

"Route disposition" means a delivery (including disposition from a plant store or from a distribution point and distribution by a vendor or vending machine) of any fluid milk product classified as Class I milk to a retail or wholesale outlet other than a milk or filled milk plant. A delivery through a distribution point shall be attributed to the plant from which the Class I milk is moved through a distribution point to wholesale or retail outlets.

§ 1099.4 [Reserved]

§ 1099.5 Distributing plant.

"Distributing plant" means a plant in which milk is processed and packaged and from which there is route disposition during the month in the marketing area.

§ 1099.6 Supply plant.

"Supply plant" means a plant (except a distributing plant) which is qualified as a pool plant pursuant to the proviso in § 1099.7(b) or a plant from which milk or skim milk which may be distributed in the marketing area under a Grade A label is supplied during the month to a plant qualified pursuant to § 1099.7(a).

§ 1099.7 Pool plant.

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

(a) A distributing plant from which there is total route disposition, except filled milk, in an amount equal to 45 percent or more of its receipts of milk from dairy farmers producing milk under a Grade A dairy farm permit or rating issued by a duly constituted health authority (including milk of such dairy farmer diverted by the plant operator), from handlers described in § 1099.9(c), and fluid milk products, except filled milk, from other plants during the month and from which there is route disposition, except filled milk, in the marketing area in an amount equal to a daily average of 3,000 pounds or more per day, or 10 percent or more of such receipts, whichever is less: *Provided*, That a plant which qualifies as a pool plant by complying with the foregoing requirements during any month shall be a pool plant during the following month.

(b) A distributing plant or supply plant from which the volume of milk and skim milk shipped to pool plants qualified pursuant to paragraph (a) of this section, or disposed of as route disposition (excluding filled milk) is equal to not less than 50 percent of the receipts of milk from dairy farmers producing milk under a Grade A dairy farm permit or rating issued by a duly constituted health authority (including milk of such dairy farmers diverted by the plant operator), from handlers described in § 1099.9(c), and fluid milk products, except filled milk, received from other plants: *Provided*, That if a supply plant ships to pool plants qualified pursuant to paragraph (a) of this section milk and skim milk equal to at least 75 percent of its receipts of milk from such dairy farmers and handlers described in § 1099.9(c) in October and November and 35 percent of such milk in three additional months during the period from

August through January, such plant shall, upon written application to the market administrator on or before the end of such period, be designated as a pool plant until the end of any month during the succeeding August through January period in which the milk of such plant is disposed of in such a way that it becomes impossible for the plant to reestablish its qualification under the term of this proviso, *And provided further,* That in the case of a supply plant operated by a cooperative association which supplies to other pool plants at least two-thirds of the producer milk of its producer members (including both the milk delivered directly from the farms of member producers and that delivered from the plant of the association) delivered to all plants during the current month or during the immediately preceding 12-month period, the milk which such association causes to be delivered to the pool plants of other handlers in its capacity as a handler described in § 1099.9 (c), shall be considered as having been received first at the plant of such cooperative association for the purpose of qualifying such plant as a pool plant pursuant to this paragraph.

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

(1) A producer-handler plant;

(2) A distributing plant qualified pursuant to paragraph (a) or (b) of this section which meets the requirements of a fully regulated plant pursuant to the provisions of another order issued pursuant to the Act and from which a greater quantity of fluid milk products, except filled milk, is disposed of during the month from such plant as route disposition in the marketing area regulated by the other order than in the Paducah, Ky., marketing area: *Provided,* That such a distributing plant which was a pool plant under this order in the immediately preceding month shall continue to be subject to all of the provisions of this part until the third consecutive month in which a greater proportion of such route disposition is made in such other marketing area, unless the other order requires regulation of the plant without regard to its qualifying as a pool plant under this order subject to the proviso of this subparagraph: *And provided further,* on the basis of a written application made either by the plant operator or by the cooperative association supplying milk to such operator's plant, at least 15 days prior to the date for which a determination of the Secretary is to be effective, the Secretary may determine that the route dispositions in the respective marketing areas to be used for purposes of this subparagraph shall exclude (for a specified period of time) route disposition made under limited-term contracts to governmental bases and institutions;

(3) A distributing plant qualified pursuant to paragraph (a) or (b) of this section which meets the requirements of a fully regulated plant pursuant to the provisions of another Federal order and from which a greater quantity of Class I milk, except filled milk, is disposed of during the month as route disposition in the Paducah marketing area than in the other marketing area, and such other order which fully regulates the plant does not contain provisions to exempt the plant from regulation even though such plant has greater route disposition in the marketing area of the Paducah, Ky., order; and

(4) Any supply plant which would be subject to the classification and pricing provisions of another order issued pursuant to the Act unless such plant qualified as a pool plant pursuant to the proviso of paragraph (b) of this section during the preceding August through January period.

§ 1099.8 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 (other than a producer-handler plant or an other order plant) from which fluid milk products are shipped to a pool plant.

§ 1099.9 Handler.

"Handler" means:

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

(b) A cooperative association qualified pursuant to § 1099.18 with respect to milk of producers diverted pursuant to § 1099.13 for the account of such association;

(c) A cooperative association which chooses to report as a handler with respect to milk which is delivered from the farm to a pool plant(s) 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. The milk so delivered shall be considered to have been received by such cooperative association at a pool plant at the location of the pool plant to which it is delivered;

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

(e) A producer-handler; or

(f) Any person who operates an other order plant described in § 1099.7(c).

§ 1099.10 Producer-handler.

"Producer-handler" means any person who operates a dairy farm and a distributing plant, from which there is route disposition within the marketing area but which receives no other source milk or milk from other dairy farmers.

§ 1099.11 [Reserved]

§ 1099.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk under a Grade A dairy farm permit or rating issued by a duly constituted health authority, which milk is received at a pool plant or by a handler described in § 1099.9(c).

(b) "Producer" shall not include:

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

(2) Any person with respect to milk produced by him which is diverted to a pool plant from an other order plant if the other order designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to § 1099.44(a)(8)(iii) and the corresponding step of § 1099.44(b); and

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

§ 1099.13 Producer milk.

"Producer milk" means all skim milk and butterfat contained in milk produced by a producer which is:

(a) Received during the month at a pool plant from producers or from a handler described in § 1099.9(c);

(b) Received by a handler described in § 1099.9(c) but which is not delivered to a pool plant of another handler and constitutes shrinkage pursuant to § 1099.41(c) or Class I shrinkage; or

(c) Diverted by the operator of a pool plant or by a handler described in § 1099.9(b) to a nonpool plant that is not a producer-handler plant, subject to the following conditions:

(1) Not less than 5 days' production of any producer whose milk is diverted is physically received at a pool plant;

(2) If diverted by a cooperative association for its account as milk of its members to nonpool plants which does not exceed 25 percent of the milk physically received from member producers of such cooperative association at pool plants during the month in any of the months of April through August and 15 percent in other months, except that if milk of members is diverted by the cooperative association in excess of the specified percentages, no milk diverted by the cooperative association during the month shall be producer milk unless the cooperative association designates the dairy farmers whose milk is not producer milk;

(3) If diverted by a handler in his capacity as the operator of a pool plant, as milk of a producer who is not a member of a cooperative association diverting milk pursuant to paragraph (c)(2) of this section, which does not exceed 25 percent of the aggregate quantity of milk received at such plant from such nonmember producers during the month in any of the months of April through

August and 15 percent in other months, except that if milk of nonmember producers is diverted by the handler in excess of the specified percentages, no milk diverted by the handler during the month shall be producer milk unless the handler designates the dairy farmers whose milk is not producer milk; and

(4) Milk diverted for the account of a handler in his capacity as an operator of a pool plant shall be deemed to have been received at the pool plant from which diverted and milk diverted for the account of a cooperative association shall be deemed to have been received by the cooperative association at a pool plant at a location identical with that of the pool plant from which diverted.

§ 1099.14 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 § 1099.40(b)(1) from any source other than producers, handlers described in § 1099.9(c), or pool plants;

(b) Receipts in packaged form from other plants of products specified in § 1099.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1099.40(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 § 1099.40(b)(1)) for which the handler fails to establish a disposition.

§ 1099.15 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 § 1099.40 (b) or (c)(1) (i) through (v) if it contains by weight at least 80 percent water and 6.5 percent nonfat milk solids and less than 9 percent butterfat and 20 percent total solids.

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

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

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

§ 1099.16 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.

§ 1099.17 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).

§ 1099.18 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

§ 1099.30 Reports of receipts and utilization.

On or before the 6th 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 § 1099.9(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 § 1099.40(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 § 1099.9 (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.

§ 1099.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1099.9 (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 § 1099.76(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.

§ 1099.32 Other reports.

(a) On or before the 6th day after the end of each month, each handler shall report to the market administrator, in the detail and on forms prescribed by the market administrator, as follows:

(1) The name and address of each producer from whom milk was not received during the previous months and the date on which milk was first received from such producer; and

(2) The name and address of each producer who discontinues deliveries of milk and the date on which milk was last received from such producer.

(b) In addition to the reports required pursuant to paragraph (a) of this section and §§ 1099.30 and 1099.31, 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

§ 1099.40 Classes of utilization.

Except as provided in § 1099.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1099.30 shall be classified as follows:

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

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

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

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

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

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

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

(4) Used to produce:

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

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

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

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

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

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

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

(1) Used to produce:

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

(ii) Butter;

(iii) Any milk product in dry form;

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

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

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

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

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

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

(5) In skim milk in any modified fluid milk product that is in excess of the quantity of skim milk in such product that was included within the fluid milk product definition pursuant to § 1099.15; and

(6) In shrinkage assigned pursuant to § 1099.41(a) to the receipts specified in § 1099.41(a)(2) and in shrinkage specified in § 1099.41 (b) and (c).

§ 1099.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1099.30, the market administrator shall determine the following:

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

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

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

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

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant and milk received from a handler described in § 1099.9(c));

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1099.9(c), except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be 2 percent;

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

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

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

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

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

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1099.9 (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.

§ 1099.42 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 § 1099.44(a)(12) and the corresponding step of § 1099.44(b);

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1099.44(a)(7) or the corresponding step of § 1099.44(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 § 1099.44(a) (11) or (12) or the corresponding steps of § 1099.44(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 § 1099.40.

(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 § 1099.30 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.

§ 1099.43 General classification rules.

In determining the classification of producer milk pursuant to § 1099.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1099.30 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 § 1099.9 (b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1099.40, 1099.41, and 1099.42;

(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 § 1099.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1099.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1099.9(a) for each of his pool plants separately and of each handler described in § 1099.9 (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 § 1099.41(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 another 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 § 1099.40(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 § 1099.40(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 § 1099.40(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 § 1099.40(b)(1) that was not subtracted pursuant to paragraph (a)(4), (5), and (6) of this section;

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

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

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

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

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

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

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

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

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

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

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

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

(9) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 1099.40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to paragraph (a)(5) and (7)(i) of this section;

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

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

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

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

(12) Subtract in the manner specified below from the pounds of skim milk remaining in each class the pounds of

skim milk in receipts of bulk fluid milk products from another order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraph (a)(7)(vi) and (8)(iii) of this section:

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

(*a*) The estimated utilization of skim milk of all handlers in each class as announced for the month pursuant to § 1099.45(a); or

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

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

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

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

(13) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products and bulk fluid cream products from another pool plant according to the classification of such products pursuant to § 1099.42(a); and

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

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

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

§ 1099.45 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 § 1099.44(a)(12) and the corresponding step of § 1099.44(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 § 1099.44 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) Upon request, report, on or before the 25th day after the end of each month, to each cooperative association described in § 1099.86(b) the percentage of milk which was caused to be delivered by such association or by its members and which was used in each class by each handler receiving any such milk. For the purpose of this report the milk so received shall be prorated to each class in the proportion that the total receipts of milk from producers by such handler were used in each class.

Class Prices

§ 1099.50 Class prices.

Subject to the provisions of § 1099.52, 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 $1.70.

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

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

§ 1099.51 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.

§ 1099.52 Plant location adjustments for handlers.

(a) For milk received from producers at a pool plant located more than 40 miles by shortest highway distance as measured by the market administrator, from the nearest County Courthouse in any of the counties included in the marketing area and disposed of as Class I milk or assigned Class I location adjustment credit pursuant to paragraph (b) of this section, the price computed pursuant to § 1099.50(a) shall be reduced by 7.5 cents, plus 1.5 cents for each 10 miles or fraction thereof that such distance exceeds 50 miles.

(b) For purposes of calculating such adjustment, transfers between pool plants shall be assigned Class I disposition at the transferee-plant, in excess of the sum of 95 percent of the receipts at such plant from producers and handlers described in § 1099.9(c), and the volume assigned as Class I to receipts from other order plants (and unregulated supply plants) such assignment to be made first to transferor-plants at which no location adjustment credit is applicable and then in sequence beginning with the plant at which the least location adjustment would apply.

(c) The Class I price applicable to other source milk shall be adjusted at the 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.

§ 1099.53 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.

UNIFORM PRICE

§ 1099.60 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 § 1099.9 (b) and (c) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1099.44 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 § 1099.44(a)(14) and the corresponding step of § 1099.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1099.74, 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 § 1099.44(a)(9) and the corresponding step of § 1099.44(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 § 1099.44(a)(7) (i) through (iv) and the corresponding step of § 1099.44(b), excluding receipts of bulk fluid cream products from another 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 § 1099.44(a)(7) (v) and (vi) and the corresponding step of § 1099.44(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 § 1099.44(a)(11) and the corresponding step of § 1099.44(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.

§ 1099.61 Computation of uniform price (including weighted average price).

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

(a) Combine into one total the values computed pursuant to § 1099.60 for all handlers who filed the reports prescribed by § 1099.30 for the month and who made the payments pursuant to §§ 1099.71 and 1099.73 for the preceding month;

(b) Add an amount equivalent to the sum of the net deductions (reductions less increases) for location adjustments to be made from producer payments pursuant to § 1099.75;

(c) Add an amount equivalent 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 § 1099.60(f);

(e) Subtract not less than 4 cents nor more than 5 cents from the amount computed pursuant to paragraph (d) of this section. The resulting figure shall be the "weighted average price," and, except for the months specified below, shall be the "uniform price" for milk received from producers;

(f) For the months specified in paragraphs (g) and (h) of this section, subtract from the amount resulting from the computations pursuant to paragraphs (a) through (c) of this section an amount computed by multiplying the hundredweight of milk specified in paragraph (d)(2) of this section by the weighted average price;

(g) For each of the months of April, May, June, and July, subtract an amount equal to 50 cents per hundredweight on the total amount of producer milk in these computations, which amount is to be retained in the producer-settlement fund and disbursed according to the provisions of paragraph (h) of this section;

(h) For each of the months of October, November, December, and January add one-fourth of the total amount subtracted pursuant to paragraph (g) of this section;

(i) Divide the resulting sum by the total hundredweight of producer milk included in these computations; and

(j) 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.

§ 1099.62 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

§ 1099.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund, known as the "producer-settlement fund", which shall function as follows:

(a) All payments made by handlers, pursuant to §§ 1099.71, 1099.76, and 1099.77 shall be deposited in this fund, and all payments made pursuant to §§ 1099.72 and 1099.77 shall be made from this fund: *Provided*, That payments due to any handler shall be offset by payments due from such handler; and

(b) All amounts subtracted pursuant to § 1099.61(g) shall be deposited in this fund and set aside as an obligated balance until withdrawn to effectuate § 1099.73 in accordance with the requirements of § 1099.61(h).

§ 1099.71 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 § 1099.60.

(2) The sum of:

(i) The value at the uniform price, as adjusted pursuant to § 1099.75, of such handler's receipts of producer milk; and

(ii) The value at the weighted average price applicable at the location of the plant from which received of other source milk for which a value is computed pursuant to § 1099.60(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.

§ 1099.72 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 § 1099.71(a)(2) exceeds the amount computed pursuant to § 1099.71(a)(1). If at such time the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the appropriate funds are available.

§ 1099.73 Payments to producers and to cooperative associations.

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

(1) On or before the last day of each month to each such producer who did not discontinue shipping milk to such handler before the 25th day of the month, an amount equal to not less than the Class III price for the preceding month multiplied by the hundredweight of milk received from such producer during the first 15 days of the month, less proper deductions authorized by such producer to be made from payments due pursuant to this subparagraph;

(2) On or before the 17th day of the following month, an amount equal to not less than the uniform price, as adjusted pursuant to §§ 1099.74 and 1099.75, multiplied by the hundredweight of milk received from such producer during the month, subject to the following adjustments: (i) Less payments made to such producer pursuant to paragraph (a)(1) of this section, (ii) less deductions for marketing services made pursuant to § 1099.86, (iii) plus or minus adjustments for errors made in previous payments made to such producer, and (iv) less proper deductions authorized in writing by such producer: *Provided,* That if by such date such handler has not received full payment pursuant to § 1099.72 from the market administrator for such month, he may reduce pro rata his payments to producers by not more than the amount of such underpayment. Payments to producers shall be completed thereafter not later than the date for making payments pursuant to this paragraph next following after the receipt of the balance due from the market administrator;

(b) In the case of a cooperative association qualified pursuant to § 1099.18 which has so requested any handler in writing, such handler shall on or before the third day prior to the date on which payments are due individual producers pursuant to paragraph (a) of this section pay the cooperative association for milk received during the month from the producer members of such association an amount equal to not less than the amount due such producer members pursuant to paragraph (a) of this section: *Provided,* That the proper deductions referred to in paragraphs (a) (1) and (2) (iv) of this section shall be valid in the case of cooperative members only if authorized in writing by such cooperative;

(c) Each handler shall also make payment to a cooperative association delivering milk to such handler pursuant to § 1099.9(c) for milk so delivered as follows:

(1) On or before the 28th day of the month an amount equal to not less than the Class III price for the preceding month multiplied by the hundredweight of milk so received from such cooperative association during the first 15 days of the month, less proper deductions authorized in writing by the cooperative association;

(2) On or before the 14th day of the following month not less than the uniform price, as adjusted pursuant to §§ 1099.74 and 1099.75, multiplied by the hundredweight of milk so received from the cooperative association during the month, subject to the following adjustments: (i) less payments made to such cooperative association pursuant to paragraph (c) (1) of this section and (ii) less proper deductions authorized in writing by such cooperative association: *Provided,* That if by such date the handler has not received full payment pursuant to § 1099.72 from the market administrator for such month, he may reduce pro rata his payments on such milk as in the case of payments to producers pursuant to paragraph (a) of this section, and payments hereunder shall be completed not later than the date for making payments pursuant to this subparagraph next following the receipt of the balance due from the market administrator;

(d) On or before the 14th day of the following month each handler shall pay to a cooperative association, with respect to such milk as was received from the association in its capacity as a handler operating a pool plant during the month not less than the value of such milk at the class prices, as adjusted by the butterfat differential specified in § 1099.74, that are applicable at the location of the handler's pool plant; and

(e) Each handler who receives producer milk for which payment 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 as follows:

(1) On or before the 25th day of the month, the total pounds of milk received during the first 15 days of such month; and

(2) On or before the 7th day of the following month (i) the pounds of milk received each day and the total for the month together with the butterfat content of such milk, (ii) the amount or rate and nature of any deductions, and (iii) the amount and nature of payments due pursuant to § 1099.77.

§ 1099.74 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.

§ 1099.75 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, and the uniform price for producer milk diverted to a nonpool plant shall be reduced according to the location of the pool plant from which it is diverted at the rates set forth in § 1099.52.

(b) For purposes of computations pursuant to §§ 1099.71 and 1099.72 the weighted average price shall be adjusted at the rates set forth in § 1099.52 applicable at the location of the nonpool plant from which the milk was received, except that the adjusted weighted average price shall not be less than the Class III price.

§ 1099.76 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 §§ 1099.30(b) and 1099.31(b) the information necessary for making the computations, such handler may elect to pay in lieu of such payment the amount computed pursuant to paragraph (b) of this section:

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

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

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

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

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

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

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

(5) Add the amount obtained from multiplying the pounds of reconstituted

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

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

(1) Determine the value that would have been computed pursuant to § 1099.60 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 § 1099.60 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 § 1099.60 for such handler shall include, in lieu of the value of other source milk specified in § 1099.60(f) less the value of such other source milk specified in § 1099.71(a)(2)(ii), a value of milk determined pursuant to § 1099.60 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 § 1099.7(b), subject to the following conditions:

(a) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1099.30 (b) and 1099.31(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 § 1099.60 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 § 1099.74, 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 § 1099.74, 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.

§ 1099.77 Adjustment of accounts.

Whenever verification by the market administrator of payments by any handler discloses errors made in payments to the producer-settlement fund, the market administrator shall promptly bill such handler for any unpaid amount and such handler shall, within 15 days, make payment to the market administrator of the amount so billed. Whenever verification discloses that payment is due from the market administrator to any handler, the market administrator shall, within 15 days, make such payment to such handler. Whenever verification by the market administrator of the payment by a handler to any producer or cooperative association for milk received by such handler discloses payment of less than is required by § 1099.73, the handler shall make up the difference of such payment not later than the next time for making payments as set forth in the provisions relating to payments which were in error.

Administrative Assessment and Marketing Service Deduction

§ 1099.85 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 five cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to:

(a) Producer milk (including such handler's own production) and milk received from a handler described in § 1099.9(c);

(b) Other source milk allocated to Class I pursuant to § 1099.44(a)(7) and (11) and the corresponding steps of § 1099.44(b), except such other source milk that is excluded from the computations pursuant to § 1099.60 (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 § 1099.76(a)(2).

§ 1099.86 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 pursuant to § 1099.73 with respect to milk received from producers (excluding such handler's own farm production), shall deduct 6 cents per hundredweight, or such lesser amount as the Secretary may prescribe; and, on or before the 20th day after the end of the month, shall pay such deductions to the market administrator. Such moneys shall be expended by the market administrator to verify weights, samples, and tests of the milk of such producers 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) *Cooperative associations.* In the case of producers who are members of a cooperative association, which the Secretary has determined is actually performing the services set forth in paragraph (a) of this section and which is not receiving payment for its producer members, each handler shall make, in lieu of the deductions specified in paragraph (a) of this section, such deductions from the payments to be made to such producers pursuant to § 1099.73(b) as may be authorized by the membership agreement or marketing contract between such cooperative association and such producers, and on or before the 20th day after the end of each month, pay over such deductions to the association rendering such services.

[FR Doc.74-4363 Filed 3-1-74;8:45 am]

federal register

MONDAY, MARCH 4, 1974
WASHINGTON, D.C.

Volume 39 ■ Number 43

PART III

ENVIRONMENTAL PROTECTION AGENCY

■

STEAM ELECTRIC POWER GENERATING POINT SOURCE CATEGORY

Proposed Effluent Limitations Guidelines and Standards

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 423]

EFFLUENT LIMITATIONS GUIDELINES AND STANDARDS FOR THE STEAM ELECTRIC POWER GENERATING POINT SOURCE CATEGORY

Notice of Proposed Rule-Making

Notice is hereby given that effluent limitations guidelines for existing sources and standards of performance and pretreatment standards for new sources set forth in tentative form below are proposed by the Environmental Protection Agency (EPA) for the steam electric power generating category pursuant to sections 301, 304 (b) and (c), 306(b), 307(c) and 501(a) of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251, 1311, 1314 (b) and (c), and 1316(b), 1317(c) and 1361(a), 86 Stat. 816 et seq.; Pub. L. 92-500 (the Act).

(a) *Legal authority*—(1) *Existing point sources.* Section 301(b) of the Act requires the achievement by not later than July 1, 1977, of effluent limitations for point sources, other than publicly owned treatment works, which require the application of the best practicable control technology currently available as defined by the Administrator pursuant to section 304(b) of the Act. Section 301 (b) also requires the achievement by not later than July 1, 1983, of effluent limitations for point sources, other than publicly owned treatment works, which require the application of the best available technology economically achievable which will result in reasonable further progress toward the national goal of eliminating the discharge of all pollutants, as determined in accordance with regulations issued by the Administrator pursuant to section 304(b) of the Act.

Section 304(b) of the Act requires the Administrator to publish regulations providing guidelines for effluent limitations setting forth the degree of effluent reduction attainable through the application of the best practicable control technology currently available and the degree of effluent reduction attainable through the application of the best control measures and practices achievable including treatment techniques, process and procedure innovations, operating methods and other alternatives. The regulations proposed herein set forth effluent limitations guidelines, pursuant to section 304(b) of the Act, for the steam electric power generating category.

(2) *New sources.* Section 306 of the Act requires the achievement by new sources of a Federal standard of performance providing for the control of the discharge of pollutants which reflects the greatest degree of effluent reduction which the Administrator determines to be achievable through application of the best available demonstrated control technology, processes, operating methods, or other alternatives, including, where practicable, a standard permitting no discharge of pollutants.

Section 306(b)(1)(B) of the Act requires the Administrator to propose regulations establishing Federal standards of performance for categories of new sources included in a list published pursuant to section 306(b)(1)(A) of the Act. The Administrator published in the FEDERAL REGISTER of January 16, 1973, (38 FR 1624) a list of 27 source categories, including the steam electric power generating category. The regulations proposed herein set forth the standards of performance applicable to new sources within the steam electric power generating category.

Section 307(c) of the Act requires the Administrator to promulgate pretreatment standards for new sources at the same time that standards of performance for new sources are promulgated pursuant to section 306. Section 423.16 proposed below provides pretreatment standards for new sources within the steam electric power generating category.

Section 304(c) of the Act requires the Administrator to issue to the States and appropriate water pollution control agencies information on the processes, procedures or operating methods which result in the elimination or reduction of the discharge of pollutants to implement standards of performance under section 306 of the Act. The report referred to below provides, pursuant to section 304 (c) of the Act, preliminary information on such processes, procedures or operating methods.

(3) *Thermal discharges.* Section 316 (a) of the Act provides a means for further consideration of thermal effluent limitations required under sections 301 and 306 of the Act. Section 316(a) states that with respect to any point source subject to the provisions of sections 301 or 306, whenever the owner or operator of any such source, after opportunity for public hearing, can demonstrate to the satisfaction of the Administrator (or, if appropriate, the State) that any effluent limitation proposed for the control of the thermal component of any discharge from such source will require effluent limitations more stringent than necessary to assure the protection and propagation of a balanced, indigenous population of shellfish, fish, and wildlife in and on the body of water into which the discharge is to be made, the Administrator (or, if appropriate, the State) may impose a different effluent limitation for the thermal component of the discharge than would ordinarily be required under sections 301 and 306 of the Act. Effluent limitations imposed under section 316(a) must assure the protection and propagation of a balanced indigenous population of shellfish, fish, and wildlife in and on the body of water into which the discharge is to be made.

(b) *Summary and basis of proposed effluent limitations guidelines, standards of performance and pretreatment standards for new sources*—(1) *General methodology.* The effluent limitations guidelines and standards of performance proposed herein were developed in the following manner. The point source category was first studied for the purpose of determining whether separate limitations and standards are appropriate for different segments within the category. This analysis included a determination of whether differences in raw material used, product produced, manufacturing process employed, age, size, waste water constituents and other factors require development of separate limitations and standards for different segments of the point source category. The raw waste characteristics for each such segment were then identified. This included an analysis of (1) the source, flow and volume of water used in the process employed and the sources of waste and waste waters in the plant; and (2) the constituents of all waste water. The constituents of the waste waters which should be subject to effluent limitations guidelines and standards of performance were identified.

Next, the control and treatment technologies existing within each segment were identified. This included an identification of each distinct control and treatment technology, including both in-plant and end-of-process technologies, which are existent or capable of being designed for each segment. It also included an identification of, in terms of the amount of constituents and the chemical, physical, and biological characteristics of pollutants, the effluent level resulting from the application of each of the technologies. The problems, limitations and reliability of each treatment and control technology were also identified. In addition, the non-water quality environmental impact, such as the effects of the application of such technologies upon other pollution problems, including air, solid waste, noise and radiation, were identified. The energy requirements of each control and treatment technology were determined as well as the cost of the application of such technologies.

The information, as outlined above, was then evaluated in order to determine what levels of technology constitute the "best practicable control technology currently available," the "best available technology economically achievable" and the "best available demonstrated control technology, processes, operating methods, or other alternatives." In identifying such technologies, various factors were considered. These included the total cost of application of technology in relation to the effluent reduction benefits to be achieved from such application, the age of equipment and facilities involved, the process employed, the engineering aspects of the application of various types of control techniques, process changes, non-water quality environmental impact (including energy requirements) and other factors.

The data on which the above analysis was performed included EPA permit applications, EPA sampling and inspections, consultant reports, and industry submissions.

The pretreatment standards proposed herein are intended to be complementary to the pretreatment standards proposed for existing sources under Part 128 of 40 CFR. The basis for such standards are set forth in the FEDERAL REGISTER of July 19, 1973, 38 FR 19236. The provisions of Part 128 are equally applicable to sources which would constitute "new sources" under section 306 if they were to discharge pollutants directly to navigable waters, except for § 128.133. That section provides a pretreatment standard for "incompatible pollutants" which requires application of the "best practicable control technology currently available," subject to an adjustment for amounts of pollutants removed by the publicly owned treatment works. Since the pretreatment standards proposed herein apply to new sources, § 423.16 below amends § 128.133 to require application of the standard of performance for new sources rather than the "best practicable" standard applicable to existing sources under sections 301 and 304(b) of the Act.

(2) *Summary of conclusions with respect to steam electric power generating category.*—(i) *Categorization.* Steam electric powerplants utilize heat released from suitable fuels to produce steam which, in turn, drives turbine generators which produce electrical energy. The used, expanded steam is condensed into water by rejecting unusable waste heat into a cooling water circuit. The condensed steam, now high-purity water, is then returned to the powerplant boiler ready for re-use. The rejected heat must be discarded to the environment.

Steam electric powerplants (stations) are comprised of one or more generating units. A generating unit typically consists of a discrete boiler, turbine-generator and condenser system; however, some units employ multiple boilers with common headers to multiple turbine-generators. Fuel storage and handling facilities, water treatment equipment, electrical transmission facilities, and auxiliary components may be a part of a discrete generating unit or may service more than one generating unit.

The characteristics of waste water cause technology for the control and erating units because factors such as age, size, etc., are not correlated with waste load or practicability of employing control technology.

While there are no formal subcategories, differences in age, size, processes employed, etc., were considered in development of limitations and are reflected in the limitations and in the dates by which the limitations must be achieved. Betreatment of heat is specific to that parameter and higher in cost than technology required to control other parameters, the guidelines for heat were developed separately. Guidelines for other parameters apply (generally) to all genheat discharges and the degree of practicability of control and treatment technology for heat are closely associated with characteristics of the individual generating units employed. The most significant factors governing the quantity of waste heat generated relative to the electrical energy produced (a measure of the process efficiency) are the characteristics of the generating process employed. The significant process factors include the raw materials (fuel) employed, the boiler design pressure and temperature, cycle characteristics such as reheat and regeneration, and the turbine characteristics. Generally the newer, larger, more-efficient units are assigned base-load service and the older, smaller, less-efficient units are used for meeting peak demands. The type of service (base-load, etc.) and remaining service life characteristics are significant factors affecting the degree of practicability of attaining effluent reductions relative to the quantities of heat generated inasmuch as they determine, in combination, the amount of corresponding electrical energy production to which the control and treatment costs are compared.

The 1970 National Power Survey, a report by the Federal Power Commission (FPC) describes base-load, intermediate, and peaking units as follows. Base-load units are designed to run more or less continuously near full capacity, except for periodic maintenance shutdowns. Peaking units are designed to supply electricity, principally during times of maximum system demand, and characteristically run only a few hours a day. Units used for intermediate service between the extremes of base-load and peaking service must be able to respond readily to swings in systems demand, or cycling. Units used for base-load service produce 60 percent, or more, of their intended maximum output during any given year, i.e., 60 percent, or more, capacity factor; peaking units less than 20 percent; and cycling units 20 to 60 percent. The FPC Form 67, which must be submitted annually by all steam electric plants (except small plants or plants in small systems), reports average boiler capacity factors for each boiler. The boiler capacity factor is indicative of the gross generation of the associated generating unit. The net generation is less than the gross generation to the extent that electricity is used by the plant itself.

The operations and economics of nuclear power generation dictate base-load service for these units in spite of the significantly larger quantities of waste heat rejected to cooling water compared to otherwise similar fossil-fueled base-load units. Similarly, all of the large high-pressure, high-temperature, fossil-fueled units have been designed for base-load service.

The base-load units placed in service in the 1960's had as of 1970 approximately 15 or more years of base-load service remaining, but eventually the installation of more economic base-load generating units may make it desirable to convert certain units to cyclic or peaking service. However, some fossil-fueled units have been initially built for cyclic or peaking service, beginning in 1960 and extending to the present. Features of units designed for cyclic or peaking service include the absence of the use of coal as a fuel, high-pressure, high-temperature steam conditions, reheat stages, and some additional feed-water heaters which are normally used with most base-load units.

Base-load units represent approximately 70 percent of the total U.S. installed capacity of steam-electric powerplants, cycling units 25 percent, and peaking units 5 percent. However base-load units account for approximately 90 percent of the total U.S. steam electric energy generation, and therefore, approximately 90 percent of total effluent heat. Cycling units account for approximately 10 percent of the total effluent heat, and peaking units less than 1 percent.

(ii) *Waste characteristics.* The known characteristics of waste water discharges from steam electric powerplants include: acidity, algicides, alkalinity, aluminum, ammonia, biochemical oxygen demand, boron, bromide, chemical oxygen demand, chloride, copper, debris, fecal coliform, fluoride, free available chlorine, heat, iron, lead, magnesium, manganese, mercury, nitrate, oil and grease, pH, phenols, selenium, sulfate, sulfite, surfactants, total chromium, total dissolved solids, total hardness, total phosphorus, total residual chlorine, total solids, total suspended solids, turbidity, vanadium and zinc.

Steam electric powerplants discharge about 50 trillion gallons of waste water per year, which is roughly 15% of the total flow of waters in U.S. rivers and streams. Almost all of this water contains heat and in some cases chemicals added by the powerplants. Other waste waters from steam electric powerplants are relatively low in volume but can contain significant amounts of the full range of pollutants other than heat added by the powerplant.

(iii) *Control and treatment technology.*—(1) Heat. Thermal (waste heat) control and treatment technologies are of two general types; those which are designed to reduce the quantities of waste heat rejected from the process in relation to the quantities of electrical energy generated and those which are designed to eliminate to some degree the reliance upon a navigable water body as an intervening step leading to the ultimate transfer of the rejected heat to and beyond the atmosphere. The former type of thermal control is confined to in-process means, while the latter takes the form of external devices, other than navigable water bodies, which extract heat from the circulating cooling water after it obtains the rejected heat at the condenser. For the purpose of effluent heat reduction the latter is clearly the most cost effective over the range of significant effluent reductions.

External thermal control means take the form, on one extreme, of surface

water bodies confined to the property of the powerplant; and, on the other, of configured engineering structures. Other methods between these extremes combine engineering equipment with the confined surface water bodies. The configured engineering structures (towers) are more universally applicable than means involving to any degree confined surface water bodies due to the significantly larger land areas needed for the latter.

Cooling towers are available utilizing any one, and in some cases more than one, of the following combinations of engineering characteristics: evaporative or nonevaporative, mechanical draft or natural draft, forced mechanical draft or induced mechanical draft, fan-assisted natural draft or unassisted natural draft, and crossflow or counterflow. The specific type of cooling tower most widely used at powerplants today is the crossflow, induced mechanical draft, evaporative tower. Theoretically, a cooling tower of any type could be designed to remove a part of or all of the waste heat rejected by any powerplant. In practice, however, site-dependent factors prevail which can preclude the application of any particular means for any particular powerplant and which further lead to the selection of the most appropriate means from the remaining candidates due to cost and other considerations.

Mechanical draft evaporative cooling towers are in operation in conjunction with approximately 200–300 or more steam electric generating units in the U.S. out of a total of about 3000 units at approximately 1000 plants. Natural draft evaporative cooling towers have been constructed, or are on order, for approximately 60 additional generating units. Between 50 and 100 more units employ unaugmented or mechanically augmented cooling lakes, ponds and canals. One dry (non-evaporative) cooling tower is in use in the U.S. In most cases, the external thermal control means are employed to completely recirculate the cooling water, except for the relatively small amounts discharged in the bleed, or blowdown, necessary for control of cooling water chemistry to achieve a practical degree of corrosion and scaling protection. In this manner essentially 100 percent of the waste heat rejected to the cooling water is removed and transferred directly to the atmosphere.

In establishing effluent limitations reflecting levels of technology corresponding to the best practicable control technology currently available (to be achieved no later than July 1, 1977), best available technology economically achievable (to be achieved no later than July 1, 1983), standards of performance for new sources, and pretreatment standards, it must be concluded that there is only one suitable technology available and demonstrated, evaporative external cooling to achieve essentially no discharge of heat, except for cold-side blowdown, in a closed, recirculating cooling system. The judgments involved are therefore reduced to the determination of the types of units to which the technology should be applied and when it should be applied, in the light of incremental national-scale costs versus effluent reduction benefits as well as unit-by-unit costs versus effluent reduction benefits and other factors.

In consideration of the total costs of the application of technology in relation to the effluent reduction benefits for heat, and other factors including energy and other non-water quality environmental impacts, the effluent limitations corresponding to the best practicable control technology currently available are no discharge of heat except for cold-side blowdown, for all large base-load units the construction of which is completed after July 1, 1977, as is reflected by the application of closed-cycle evaporative cooling systems. The mechanical draft evaporative cooling tower provides the basis for the analysis used to evaluate the costs, effluent reduction benefits and other factors. No limitation on heat is reflected by the best practicable control technology for cyclic and peaking units. No limitation on heat is reflected by the best practicable control technology for units with insufficient land available for mechanical draft towers, including spacing, or where salt water drift from mechanical draft towers could adversely impact neighboring land uses, provided no alternative technologies would be practicable.

In addition, for all units the construction of which has been or will be completed by July 1, 1977, no limitation on heat is reflected by the best practicable control technology, since, as more fully explained below, the limitation of no discharge of heat except for cold-side blowdown is not practically achievable by July 1, 1977, the date mandated by the Act for achievement of best practicable control technology currently available.

In consideration of the relevant factors including those required in the Act, such as the cost of achieving effluent reductions, energy and non-water quality environmental impacts, the effluent limitations corresponding to the best available technology economically achievable are no discharge of heat, except for cold-side blowdown, for all but the very oldest base-load units not covered by best practicable control technology currently available and for all cyclic and peaking units, as it reflected by the application of closed-cycle evaporative cooling systems. The mechanical draft evaporative cooling tower provides the basis for the analyses of costs and other factors. No limitation on heat is reflected by the best available technology economically achievable for units where sufficient land cannot be made available for mechanical draft towers, including spacing.

The time required for owners and operators of base-load units to complete the procedures for the consideration by the Regional Administrator of exemptions to the effluent limitations on heat, as provided by section 316(a) of the Act renders an effluent limitation of no discharge of heat except for cold-side blowdown outside the scope of best practicable control technology currently available for any unit which must achieve such limitation before July 1, 1977. An owner or operator following the procedure but failing to demonstrate that the effluent limitation proposed is excessively stringent could achieve an effluent limitation of no discharge by July 1, 1977, under only an optimistic set of conditions, if construction of the control means was not begun until after completion of the section 316(a) procedures. Hence, universal achievement of best practicable control technology currently available, as outlined above, by July 1, 1977, would not be realistic in the light of the time required for section 316(a) procedures. The Act contains no provisions which would allow for the delay of the required date for the application of section 301 effluent limitations in individual cases. However, since the Act requires that effluent limitations reflecting the application of the best available technology economically achievable by "no later than" July 1, 1983, it is concluded that these regulations can require that the effluent limitations be achieved by certain dates prior to July 1, 1983, if such dates are realistically achievable. Correspondingly, the realistic achievement of the goals of the Act would be served if dates for complete implementation of best available technology economically achievable were established that were realistic but not far past the 1977 horizon. This can be accomplished by limiting the coverage of the best practicable control technology currently available to the relatively small number of sources that would not be completed until after July 1, 1977. Since the scheduled dates for completion of construction for these sources would be distributed over the years 1977 to 1982, a no discharge limitation would be realistically achievable by the time affected sources would become operational.

Realistically achievable dates for the base-load units constructed before July 1, 1977, would be as follows:

1. Capacity of 500 MW and greater: July 1, 1978
2. Capacity 300 to 499 MW: July 1, 1979
3. Capacity 299 MW and less, except for small units: July 1, 1980
4. Small units, i.e., unit in a plant with a capacity less than 25 MW or in a system with a capacity less than 150 MW: July 1, 1983.

The proposed best practicable control technology currently available and best available technology economically achievable for heat are based on the above rationale.

In consideration of the relevant factors including those required in the Act, such as the cost of achieving effluent reductions, energy and non-water quality environmental impacts, the effluent limitations corresponding to standards of performance for new sources for heat are no discharge of heat, except for cold

side blowdown, from all new sources, without variation.

(2) *Other pollutants.*—(A Best practicable control technologies currently available—a. *Cooling systems.* Chlorine concentrations in both recirculating and nonrecirculating cooling water systems are to be limited to average concentrations of 0.2 mg/1 during a maximum of one 2-hour period a day and maximum concentrations of 0.5 mg/1. These limitations can be achieved by means of available feedback control systems presently in wide use in other applications. Chlorination for biological control can be applied intermittently and thus should not be applied on two or more units at the same plant simultaneously in order to minimize the maximum concentration of total residual chlorine at any time in the combined cooling water discharged from the plant. Furthermore, chlorination of individual units should be applied at times of lowest flow through the condensers to minimize the total amounts (mass) of total residual chlorine discharged. Generally chlorination is not required for more than two hours each day for each unit. However, additional chlorination may be allowed in specific cases to maintain tube cleanliness. Alternative methods of reducing the total residual chlorine in nonrecirculating condenser cooling water systems include chemical treatment, substitution of other less harmful chemicals, and use of mechanical means of cleaning condenser tubes. Mechanical cleaning is employed in some plants but its practicability depends on the configuration of the process piping and structures involved at the particular unit. Moreover, chlorine may still be discharged even with mechanical cleaning of condenser tubes, because of its continued use in maintaining biological control in other parts of the cooling system. Further removal of residual chlorine in nonrecirculating condenser cooling water systems by chemical treatment is available but is not generally practicable because of the additional costs involved to treat the large volumes of water involved.

Chemical treatment of recirculating cooling water systems would be less costly and the pollution potential of residual bisulfide chemicals added would be less significant than with nonrecirculating cooling water systems due to the smaller wastes water volumes requiring treatment. Experience in this technology is highly limited in the powerplant field; however, this is a well established technology in the water supply industry. Other technologies potentially available for recirculating cooling water systems are split stream chlorination, blowdown retention, and intermittent discharge programmed with intermittent chlorination.

The use of chemicals for control of biological growth, scaling and corrosion in evaporative cooling towers is commonplace. The types and amounts of chemicals required is highly site-dependent. Chromate addition is not generally required for corrosion control. Phosphates and zinc salts are employed in some cases. Insufficient data exists to judge what alternative chemicals for control of corrosion, etc., would be generally practicable from a cost versus effluent reduction benefit standpoint. Minimum discharge of added chemicals can be achieved by employing the best practicable technology for water treatment and water chemistry to minimize the quantities of blowdown flow required. In cases where cooling towers are planned, design for corrosion protection can eliminate the need for chemical additives for corrosion protection. Treatment of cooling tower blowdown for oil and grease removal, by chemical addition for effluent pH control, and by sedimentation for reduction of effluent total suspended solids is achievable. Effluent levels of 10 mg/1 oil and grease and 15 mg/1 total suspended solids are achievable based on the treatment of similar waste waters. Due to wide range of flow of waste water from recirculating cooling water systems, the effluent limitations in mass units, in any particular plant would be the products of the flow times the respective concentration levels. Costs in general would be approximately 0.1 mill/kwh in the relatively small number of cases where it would be needed.

b. *Limitation for low-volume waste waters.* Low-volume waste water sources include boiler blowdown, ion exchange water treatment, water treatment evaporative blowdown, boiler and air heater cleaning, other equipment cleaning, laboratory and sampling streams, floor drainage, cooling tower basin cleaning, blowdown from recirculating ash sluicing systems, blowdown from recirculating wet-scrubber air pollution control systems, and other relatively low volume streams. These wastes can be practicably treated collectively by segregation from higher volume wastes, equalization, oil separation, chemical addition, solids separation, and pH adjustment.

Oily streams such as waste waters from boiler fireside cleaning, air preheater cleaning and miscellaneous equipment and stack cleaning would be practicably treated for separation of oil and grease, if needed, to a daily average level of 10 mg/1. Addition of sufficient chemicals to attain a pH level in the range 9 to 10 and total suspended solids of 15 mg/1 in the effluent of this treatment stage would be generally practicable considering the pH levels of the untreated waste streams and the waste water flow volumes involved. Generally, the higher the pH level, with total suspended solids of 15 mg/1, the greater the effluent reduction benefits attained for the numerous chemicals removed by treatment. Examples of pollutants significantly reduced by this treatment are the following: acidity, aluminum, biochemical oxygen demand, copper, fluoride, iron, zinc, lead, magnesium, manganese, mercury, oil and grease, total chromates, total phosphorous, total suspended solids, and turbidity. Some waste water characteristics, such as alkalinity, total dissolved solids; and total hardness are increased, however. Following the above treatment it would be practicable, in a second stage, to adjust the effluent pH to a level in the range 6.0 to 9.0 in compliance with stream standards, with sedimentation to attain final daily average effluent total suspended solids levels of 15 mg/1. Effluent daily average concentrations of levels of 1 mg/1 total copper and 1 mg/1 total iron are achievable by the application of this technology. The effluent limitations in mass units, in any particular plant, would be the products of the collective flow of all low-volume waste sources times the respective concentration levels.

Segregation and treatment of boiler cleaning waste water and ion exchange water treatment waste water is practiced in a relatively few plants, but is potentially practicable for all plants. Oily waste waters are segregated from non-oily waste streams at some plants and the oil and grease removed by gravity separators and flotation units.

Combined treatment of waste water streams is practiced in numerous plants. However, in most cases treatment is accomplished only to the extent that self-neutralization, coprecipitation and sedimentation occur because of the joining and detention of the waste water streams. Chemicals are added during combined treatment at some plants for pH control. Most of these plants employ lagoons, or ash ponds, while a few plants employ configured settling tanks.

c. *Limitations for once-through ash and air pollution control systems.* Daily average effluent total suspended solids levels of 15 mg/1 are practicably attainable as are oil and grease levels of 10 mg/1 and pH values in the range 6.0 to 9.0. Due to the fact that intake water to ash sluicing and air pollution control systems is often well in excess of this level, an effluent limitation of 15 mg/1 total suspended solids times the waste water flow would, in many of those cases, require the removal of large quantities of suspended solids not added by the plant. In the light of this, an effluent total suspended solids level for these streams should be limited to a daily average of 15 mg/1 times the waste water flow or a number of pounds per day not in excess of the total intake to the station for these systems, whichever represents the greater number of pounds per day.

Dry processes are used by most oil-fired plants for ash handling, while only fly ash is handled dry at some coal-fired plants. Gas-fired plants have little or no ash. The extent of the practicability of employing dry processes for bottom ash handling at coal-fired plants is not known.

d. *Limitations for rainfall run-off waste water sources.* Rainfall run-off waste water sources include coal-pile drainage, yard and roof drainage, and run-off from construction activities. Effluent limitations reflect the technology of diking, oil-water separation, solids separation, and neutralization.

(B) *Best available technology economically achievable.* The best available technology economically achievable for all plants is re-use and recycle of all waste water to the maximum practicable extent, with distillation to concentrate all low-volume water wastes and to recycle water to the process, and with evaporation to dryness of the concentrated waste followed by suitable land disposal.

Re-use of waste water streams is practiced at relatively few plants, but some employ recycle of ash sluice water. Distillation concentration with recycle is currently planned for at least three plants. Some stations plan to employ re-use of cooling tower blowdown in wet-scrubber air pollution control systems. Since water quality requirements for ash sluicing and wet scrubbing are relatively low, some degree of re-use should be practicable for most plants where these operations are employed. The concept of cascading water use, i.e., recycle and re-use of water from applications requiring high quality water to applications requiring successively lower water quality, to reduce to the volume of waste water, if any, ultimately requiring evaporation or other treatment, while practicable in all cases, would generally be subject to a case-by-case analysis to determine the optimum among the various candidate systems.

Chemical treatment of blowdown from recirculating cooling water system for removal of total chromium, total phosphorus (as P) and zinc, while not currently demonstrated, could be achieved by 1983, in the relatively small number of cases where it would be needed. Corresponding effluent limitations, based on the application of this technology, are 0.2 mg/l total chromium, 5 mg/l total phosphorus (as P), and 1 mg/l zinc-total, all times the waste water flow.

Maximum effluent reductions are attainable by segregating the initial 15 minutes of run-off from a rainfall event from the remainder of the run-off, and by treating both streams separately, each stream to achieve effluent levels of 15 mg/l total suspended solids, 10 mg/l oil and grease and a pH valuve in the range of 6.0 to 9.0. Chlorination programs to achieve no discharge of total residual chlorine from recirculating cooling water systems, while not currently demonstrated, could be applied by 1983.

c. *New source standards.* In view of the current technical risks associated with the application of distillation technology to waste water recycle, chlorination programs to achieve no discharge of total residual chlorine from recirculating cooling water systems, and segregation of rainfall run-off streams, new source performance standards have been determined to be identical to the limitations prescribed for best practicable control technology currently available with the following exceptions. No discharge is allowed of corrosion inhibitors in blowdown from recirculating evaporative cooling water system, based on the availability of design technology for corrosion prevention. No discharge of total residual chlorine or other additives for biological control in main condenser tubes, based on the availability of mechanical systems to achieve biological control in main condenser tubes. No discharge of pollutants from nonrecirculating ash sluicing system, based on the availability of dry systems and of recirculating wet systems.

(iv) *Cost of technology.* (1) Effluent heat controls. The unit costs of the application of available external control and treatment technology for heat to generating units of various sizes is essentially invariant with size, over the range of present processes, due to the general availability of small modules applicable to incremental loads.

Factors affecting the incremental costs of effluent heat reductions for any particular generating unit are dependent upon the characteristics of the plant site, as follows: Available land, generating unit configuration (accessibility of existing condenser cooling system, ability of space to accommodate a new circulating cooling system), requirements imposed by nearby land uses (drift, fogging and icing, noise, structure height and appearance), climatic considerations (wind direction and velocity), wet bulb temperature, relative humidity, dry bulb temperature, equilibrium temperature of natural (surface) cooling, soil bearing characteristics, significance of regional consumptive use of water, significance of impact on regional demand availability of power to consumers, and characteristics of intake water (temperature, concentrations of dissolved materials).

The significant costs of external cooling systems themselves are determined characteristically by three major engineering design parameters: the cooling water flow rate, the rate of heat removal required, and the difference between the desired temperature of the cold water returned to the condenser and the lowest cold water return temperature theoretically achievable. Other major costs generally associated with applying external cooling in the place of systems employing no external cooling means are attributable to additional piping and pumps and to the physical alterations in the cooling system that are required by the conversion. The incremental energy (fuel) consumption costs of external cooling system are determined largely by the additional pumping energy required, the power required to drive the circulating air fans, and in most cases where the cooling water discharged from the external cooling means is recirculated to the condensers, the increase in waste heat rejected due to the process energy conversion inefficiency imposed by the resulting increased turbine exhaust pressure. A further cost of external cooling means can be the reduced margin of reserve generating capacity of a system employing the generating unit to meet peak demands for power. The reduced capacity of a unit corresponds to the energy losses incurred during full capacity operation. A further reduction in margin of reserve generating capacity of a system will occur during the time in which a unit must be shut down in order to complete the changeover to the closed-cycle cooling system. Many changeovers can be made during normal periodic shutdowns for maintenance. Incremental downtime due to changeovers may be from 30 to 90 days for each unit.

In general, the monetary and energy consumption costs of effluent heat reductions of less than 100 percent would be approximately proportional to the corresponding percentage reduction. It must be noted that, while fractional heat removals are theoretically achievable, no external cooling means have been employed to date to meet requirements based on fractional heat removals for individual units. Moreover, the application of open cooling systems to achieve significant fractional heat removals would cause more damage to organisms brought into the cooling water system than would a closed-cycle system for essentially 100 percent heat removal due to the higher volume of intake water required by the former.

The following analysis of the monetary, energy consumption and capacity loss costs of external cooling systems are based on the requirement of the guidelines that blowdown is permitted only from the cold side of the external cooling means. On the conservative assumption that all external cooling means already employed on existing units provide for blowdown from the hot side, then the incremental costs associated with requiring blowdown from the cold side of the external cooling means of these units would be a fraction of the total cost of the required external cooling means, said fraction being approximately the ratio of the present blowdown flow rate to the total flow rate through the condensers, neglecting drift loss effects. This fraction is typically less than 2 percent.

The average incremental costs of the application of mechanical draft evaporative cooling towers to base-load units to achieve no discharge of heat except for blowdown are estimated to be as follows:

1. Production costs: 14 percent of base.
2. Capital costs: 12 percent of base.
3. Fuel consumption: 2 percent of base.
4. Capacity reduction: 3 percent of base.

Incremental dollar costs for cyclic units are higher by about 20 percent, while fuel consumption and capacity reductions are the same as for base-load units. Incremental production costs for peaking units are about three times the costs for base-load units. Incremental capital costs are about 40% higher than for base-load units, and fuel consumption and capacity reductions are the same.

The average incremental costs versus effluent reduction benefits (dollars/unit heat removed) for cyclic units are about double those for base-load units, except for fuel consumption which is invariant with the degree of utilization. Average incremental costs versus effluent reduction benefits for peaking units are about three to four times those for cyclic units.

For new sources for base-load, cyclic and peaking units respectively, the average incremental production costs are

10, 11 and 28 percent of base costs; the incremental capital costs are 9, 10, and 11 percent of base costs, the fuel consumption costs are all 1 percent of base fuel consumption, and the generating capacity reduction is 0 to 2 percent of base capacity depending on whether the capability to overdesign is considered.

The above costs for non-new sources do not reflect the exemptions from the no discharge limitation for units for which insufficient land is available for the construction of mechanical draft evaporative cooling towers or for which salt water drift precludes their use. The analyses on which the cost estimates are based assume the application of state-of-the-art technology for drift elimination, but do not assume purchase of land. The factors of adverse climate, fogging and icing, and noise, while possibly adding marginal costs where additional levels of technology are required for control, are not national-scale factors. Since the overall costs and the land availability and saltwater drift factors are based on mechanical draft evaporative cooling towers, with incremental costs for plume abatement, etc. if required, the potential aesthetic factors associated with the tall structure of natural draft towers, with spray ponds, with cooling ponds, or with cooling tower plumes have been indirectly taken into account.

While the mechanical draft evaporative cooling tower was selected as a model for the cost analyses because of its widespread use and more universal applicability, this in no way precludes the actual use of other technologies to achieve the effluent limitations. The costs of other external evaporative systems for effluent heat reduction are generally comparable to the costs of mechanical draft evaporative cooling towers. Site-dependent factors, however, could tend to increase some costs and lower others significantly depending on the location involved. Costs that would be incurred and corresponding effluent reduction benefits for units already planning or employing closed-cycle cooling systems would be zero or relatively insignificant depending upon whether the blowdown is from the cold-side or not. However, in the case of hot-side blowdown, the costs versus effluent reduction benefits related to achieving cold-side blowdown would be approximately in the same proportion as the costs versus effluent reduction benefits for achieving closed-cycle cooling for an otherwise similar unit with an open cooling system.

(2) *Controls on pollutants other than heat.* Due to the wide range of water volumes required from plant to plant for the individual unit operations involved, and further, due to the wide range (from plant to plant) of costs per unit volume of water treated, which are further related to the effluent reductions obtained, the costs vary widely for the removal of specific pollutants to various degrees. For example, boiler fireside chemical cleaning volumes vary from 24,000 gal to 720,000 gal per cleaning, with cleaning frequencies ranging from 2 to 8 times per year. The operating costs of chemical precipitation treatment for copper and iron removal to 1 mg/l effluent concentration and for chromium removal to an effluent of 0.2 mg/l range from $0.10 to $1.30/1000 gal. Furthermore, there are approximately 10 or more separate unit operations which are sources of waste water at power generating plants, each with its station-specific flow rate and waste water characteristics, as well as cost peculiarities. Site-related factors concerning the practicability of various re-use practices make these practices even more difficult to cost, due to the added complexities involved.

The incremental costs of controlled additions of chlorine, in the cases where chlorine is required for biological control, are less than 0.01 mill/kwh. In the relatively few cases where chromates are added for corrosion control and where other less harmful chemicals and methods can provide effective corrosion control the incremental costs are less than 0.01 mill per kilowatt hour.

The incremental cost of mechanical cleaning to replace some fraction of the total required chlorine additives is approximately 0.01 mill/kwh for existing stations and considerably less for new units whether at new or existing plants.

Cost esitmates based on the combined treatment of selected low-volume streams for oil and grease separation, equalization, chemical precipitation, solids separation, and further based on generalizations with respect to the cost of land, construction, site preparation and with respect to the waste water volume, indicate an approximate cost of 0.1 mill per kilowatt hour depending upon the plant's generating capacity and utilization. The highest costs are associated with the smaller plants and peaking plants which generally have the highest basic generating cost. In general, the entire incremental cost should be felt by individual plants since this type of complete chemical treatment is not generally employed.

Sedimentation of ash sluicing water, cooling tower blowdown, etc., would cost typically about 7 cents/1000 gal, with the incremental cost in mills/kwh being related to the quantities of water treated. Since many plants already have some type of sedimentation facility, the incremental costs of improved sedimentation performance if required will be some fraction of the cost cited.

In the few cases where it would be required chemical treatment for removal of phosphorus, total chromium or zinc from cooling tower blowdown would cost about $1/1000 gal treated. Incremental costs of dry ash handling systems where mechanically feasible are less than 0.01 mill/kwh for existing stations converting from wet systems and are considerably less for new sources.

Recirculating ash sluicing systems require sedimentation discussed above plus pumps, piping and a blowdown system. Incremental costs above sedimentation are less than 0.01 mill/kwh for existing plants and considerably less for new plants.

The cost of evaporation in configured equipment is approximately 1.4 dollars/1000 gal. The corresponding incremental cost in mills/kwh is related to the quantities of waste water requiring evaporation. Costs would be significantly less in climates where solar evaporation in ponds could be employed.

The incremental costs of equipment design for corrosion protection are normally largely offset by other cost benefits such as reduced costs of chemicals. The net incremental costs for both lined cooling tower components and stainless steel or titanium condenser tubes would be less than 0.1 mill/kwh total, even in the case where new or old copper alloy condenser tubes were retrofitted, due to the high offsetting salvage value of copper. Replacement of existing cooling tower components would be more expensive however.

Because of the wide range of opportunities and associated incremental costs of achieving no discharge of pollutants from waste water sources other than cooling water systems and rainfall run-off (based on the technology of maximum recycle with evaporation of the final effluent) a model plant is employed as a basis for considerations of this higher level of technology. The features of the model plant are selected to produce conservatively high incremental costs of applying this technology, i.e. the determined costs would be at a level higher than would be expected for almost all other plants. The model plant would have such adverse characteristics that recycle of all water (except that used in ash sluicing systems or in wet-scrubber air pollution control systems) would not be practicable except after distillation. Distillation is much more costly than the chemical addition and sedimentation treatments which would be used in most cases. Ash sluicing water and wet-scrubber water would be recycled after sedimentation (or filtration) for solids removal. The model plant would have to distill blowdown from ash sluicing for recycle to other processes, however, the quantities of water distilled would be less than the feed intake to the system of low quality waste waters from other sources by the amount of evaporation during sluicing and the amount of moisture removed in the ash. Therefore, the assumption of the presence of wet ash sluicing is consistent with the conservative approach of the cost analysis. Similar considerations pertain to wet-scrubber air pollution control systems. Non-solar evaporation is further assumed.

The incremental costs for achieving no discharge of pollutants, exclusive of cooling water and rainfall run-off, for the model station as previously stated are approximately 0.3 mills per kilowatt-hour for a 100 megawatt capacity base-load plant, 0.5 mills per kilowatt-hour for a cyclic plant and 1.5 mills per kilowatt-hour for a peaking plant. These costs are about 5, 6, and 12 percent of production costs, respectively. Costs for smaller plants would be generally higher

and costs for larger plants would be generally lower. Costs would be less for plants in climates suitable for solar evaporation. Cost would be generally less for nuclear plants and for gas-fired plants because there is no requirement for water related to ash handling. From an overall standpoint, costs would be generally lower than the costs for the model plant due to the conservative assumptions employed in the model. Full recycle of blowdown from evaporative recirculating cooling water systems would be significantly more costly.

(v) *Energy and Other non-water quality environmental impacts.*—(1) *Energy.* The incremental energy (fuel) consumption costs of mechanical draft evaporative cooling towers applied to existing units are typically about 1 to 2 percent of the energy generated or fuel consumed. Corresponding costs of unassisted natural draft cooling towers and of spray canals and ponds are lower by an increment of approximately ½ percent or less. Fuel consumption costs for unaugmented cooling lakes are lower by about ½ percent. The energy costs of mechanical draft dry (nonevaporative) cooling towers are higher by an increment of more than 2 percent. Energy (fuel) consumption costs of applying these closed-cycle cooling systems to new units would be less due to the opportunity provided for overall optimization of the process as well as the cooling system.

A typical existing generating unit to which mechanical draft evaporative cooling towers would be applied for essentially 100 percent reduction of effluent heat would be reduced in generating capacity by about 3 to 4 percent of its former capacity during part of the year. Reduced capacity corresponding to other types of cooling employed at existing units would be approximately proportional to the fuel consumption cost percentages cited above. For new units no capacity loss would occur since the unit would be oversized to make up for this factor.

Energy requirements for technologies reflecting the application of the best available technology economically achievable for pollutants other than heat are less than 0.2 percent of the total plant output.

Reduced margins of reserve capacity due to lost generating capacity could be significantly offset by delayed retirements, but not without some added generating costs due to the relative inefficiency of the older units. The installation of combustion turbines to replace lost capacity can be accomplished relatively quickly. Eventually the lost capacity could be replaced by the construction of new highly-efficient base-load units.

Potentially, the construction of additional transmission lines and other efforts to achieve higher degrees of regional and national reliability coordination could completely offset the reduced margins of reserve capacity due to lost generating capacity. Furthermore, citizen and other user efforts to reduce consumption during the brief periods of peak demand could significantly lessen the impact of reduced reserve margins. The above factors are especially significant in the case of the numerous units in small plants and systems where the engineering design manpower requirements would be high relative to the heat removals achieved, the availability of capital would be somewhat lower due to the smaller amounts and higher risks involved, and the possible impact of reduced reserve capacity would be larger due to the relatively limited extent of the systems.

(2) *Other non-water quality environmental impacts.* Non-water quality environmental impacts of external thermal control technology include possible effects of salt water drift (droplet carryover from evaporative towers and spray systems), increased fogging or water consumption with evaporative systems, noise if mechanical draft towers are adjacent to populated areas, and increased aesthetic impacts due to the size of natural draft towers and visible plumes from all evaporative towers. The potential effects of salt water drift have been taken into account by the exemption provided in the guidelines from the no discharge requirements in instances in which it is likely to present a significant problem. However, in the limited number of cases where it would be required, technology is available to reduce or eliminate drift, fogging, visible plumes and noise effects, and water consumption rights are available where required, each at incremental costs above standard evaporative cooling systems for closed-cycle cooling.

The non-water quality impacts of technologies available to achieve limitations on pollutants other than heat are negligible with respect to air quality, noise, water consumption and aesthetics. Solid waste disposal problems associated with achieving the limits required by best practicable control technology currently available are similarly insignificant. Systems with evaporation and recycle of waste water, which may be required to attain the effluent reductions required for best available technology economically achievable will not generally create significant amounts of solid waste. If recycle of blowdown from evaporative recirculating cooling systems were to be employed, however, considerable volumes of solid waste may be generated. In most cases these are nonhazardous substances requiring only minimal custodial care. However, some constituents may be hazardous and may require special consideration. In order to ensure long term protection of the environment from these hazardous or harmful constituents, special consideration of disposal sites may be made. All landfill sites where such hazardous wastes are disposed should be selected so as to prevent horizontal and vertical migration of these contaminents to ground or surface waters. In cases where geologic conditions may not reasonably ensure this, adequate legal and mechanical precautions (e.g., impervious liners) should be taken to ensure long term protection to the environment from hazardous materials. Where appropriate the location of solid hazardous materials disposal sites should be permanently recorded in the appropriate office of legal jurisdiction.

(vi) *Economic impact including impact on U.S. fuel consumption.* The proposed effluent limitations are based on the technological capabilities of steam electric powerplants. Section 316(a) of the Act allows for exemptions to the proposed limitations on heat, in a case-by-case basis, based on the consideration of environmental need.

It has been estimated, based on an analytical model of the cooling capacity of U.S. rivers and from a survey of EPA regional personnel, that approximately one-half to two-thirds of the steam electric powerplants (by capacity) not already achieving "no thermal discharge" are not now in violation of present or projected thermal environmental criteria. Of the remainder, "no discharge" thermal controls corresponding to generally one-half of the capacity at each plant would be warranted during certain parts of the year, based on environmental considerations. It is further estimated that generally thermal controls would be needed during 3–4 months of the year, or approximately 30 percent of the time, scattered, in the aggregate, year round.

Approximately 20 percent of existing steam electric powerplants already achieve "no thermal discharge." A significantly larger percentage (over 50 percent) of plants that are not considered "new sources" under the definitions of the Act but will begin initial operation in the period 1974–1982 are already committed to closed cooling systems.

By 1980 approximately 30 percent of all U.S. energy uses has been projected to be through electrical generation. The electrical generation processes have been projected by one source to be comprised of approximately 40 percent coal-fueled, 25 percent nuclear, 15 percent oil-fueled, 15 percent gas-fueled and 5 percent hydro and geothermal plants. Approximately 50 percent of all coal is projected to go to powerplants, 15 percent of all natural gas, and 10 percent of all oil.

Incremental fuel consumption due to closed cooling water systems at steam electric powerplants is due to the power required to drive the pumps and fans (if they are employed) in the closed system and to the reduced energy conversion efficiency brought about by changes in steam condensing pressures. Generally the increased fuel consumption relative to base fuel consumption would be approximately 1 percent for pumps and fans (if they are employed) and 1 percent for changing steam pressures. Mechanical draft evaporative cooling towers are the most widely used means for achieving closed-cycle cooling. They employ both pumps and fans. Other means commonly employed use no fans (natural draft towers, spray canals, cooling ponds) or no additional pumping (cooling

ponds). Environmentally-based thermal effluent limitations may be met by open-cycle systems, that cause no loss in energy conversion efficiency due to changing steam pressures and which use the preceding means and others.

Assuming equal environmentally-based thermal controls regardless of fuel, no net changes in generating distribution among the fuels used and use of mechanical draft cooling towers (highest fuel consumption) the above numbers translate into a 0.12 percent increase in nuclear fuel consumption to meet thermal controls, a 0.06 percent increase in total U.S. coal consumption, a 0.02 percent increase in total U.S. natural gas consumption and a 0.01 percent increase in total U.S. oil consumption, by 1980.

The estimated economic impact by 1983, of the proposed effluent limitations guidelines, considering the estimated effect of exemptions to be allowed through appeals under section 316(a) of the Act are as follows:

1. Total capital required is $12.0 billion which is 3.3 percent of the base capital required.

2. Cost to consumers would reach $4.1 billion per year, which is 3.6 percent of the base cost to consumers.

3. Price increase by 0.9 mills per kwh, or 7.2 percent of base production costs.

4. Fuel consumed would reach a level equivalent to 9 million tons of coal per year, or 0.2 percent of U.S. consumption for all purposes.

5. Capacity loss of 3,300 MW, or 0.4 percent of U.S. generating capacity.

Similarily for new sources, between 1985 and 1990, the above costs, respectively, are $11.8 billion (2.0 percent base), $1.7 billion per year (0.7 percent base), 0.05 mills per KWH (1.4 percent base production costs), 8 million tons per year (0.12 percent base), and 3,100 MW (0.25 percent base).

A report entitled "Development Document for Proposed Effluent Limitations Guidelines and New Source Performance Standards for the Steam Electric Power Generating Point Source Category" details the analysis undertaken in support of the regulations being proposed herein. The report is available for inspection in the EPA Information Center, Room 227, West Tower, Waterside Mall, 4th and M Streets, S.W., Washington, D.C., at all EPA regional offices, and at State water pollution control offices. A supplementary analysis prepared for EPA of the possible economic effects of the proposed regulations is also available for inspection at these locations. Copies of both of these documents are being sent to persons or institutions affected by the proposed regulations, or who have placed themselves on a mailing list for this purpose (see EPA's Advance Notice of Public Review Procedures, 38 FR 21202, August 6, 1973). An additional limited number of copies of both reports are available. Persons wishing to obtain a copy may write EPA Information Center, Environmental Protection Agency, Washington, D.C. 20460, Attention: Mr. Phillip B. Wisman. (A-107)

On June 14, 1973, the Agency published procedures designed to insure that, when certain major standards, regulations, and guidelines are proposed, an explanation of their basis, purpose and environmental effects is made available to the public. (38 FR 15653) The procedures are applicable to major standards, regulations and guidelines which are proposed on or after December 31, 1973, and which prescribe national standards of environmental quality or require national emission, effluent or performance standards and limitations.

The Agency determined to implement these procedures in order to insure that the public was apprised of the environmental effects of its major standards setting actions and was provided with detailed background information to assist it in commenting on the merits of a proposed action. In brief, the procedures call for the Agency to make public the information available to it delineating the major nonenvironmental factors affecting the decision, and to explain the viable options available to it and the reasons for the option selected.

The procedures contemplate publication of this information in the FEDERAL REGISTER, where this is practicable. They provide, however, that where, because of the length of these materials, such publication is impracticable, the material may be made available in an alternate format.

The report entitled "Development Document for Proposed Effluent Limitations Guidelines and New Source Performance Standards for the Steam Electric Power Generating Point Source Category" contains information available to the Agency concerning the major environmental effects of the regulation proposed below, including:

(1) The pollutants presently discharged into the National waterways by steam electric generating plants and the degree of pollution reduction obtainable from implementation of the proposed guidelines and standards (see particularly sections IV, V, VI, IX, X, and XI);

(2) The anticipated effects of the proposed regulations on other aspects of the environment including air, solid waste disposal and land use, and noise (see particularly section VIII); and

(3) Options available to the Agency in developing the proposed regulatory system and the reasons for its selecting the particular levels of effluent reduction which are proposed (see particularly sections VI, VII, and VIII).

The supplementary report entitled "Economic Analysis of Proposed Effluent Guidelines Steam Electric Power Generating Category" contains an estimate of the cost of pollution control requirements and an anlysis of the possible effects of the proposed regulations on prices, production levels, employment, and international trade. In addition, the above described Development Document describes, in section VIII, the cost and energy consumption implications of the proposed regulations.

The two reports described above in the aggregate exceed 500 pages in length and contain a substantial number of charts, diagrams, and tables. It is clearly impracticable to publish the material contained in these documents in the FEDERAL REGISTER. To the extent possible, significant aspects of the material have been presented in summary form in foregoing portions of this preamble. Additional discussion is contained in the following analysis of comments received and the Agency's response to them. As has been indicated, both documents are available for inspection at the Agency's Washington, D.C. and regional offices and at State water pollution control agency offices. Copies of each have been distributed to persons and institutions affected by the proposed regulations or who have placed themselves on a mailing list for this purpose. Finally, so long as the supply remains available, additional copies may be obtained from the Agency as described above.

When regulations for the steam electric power generating category are promulgated in final form, revised copies of the Development Document will be available from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. Copies of the Economic Analysis will be available through the National Technical Information Service, Springfield, Virginia 22151.

(c) *Summary of public participation.* Prior to this publication, the agencies and groups listed below were consulted and given an opportunity to participate in the development of the effluent limitations guidelines and standards of performance for the steam electric power generating category. All participating agencies have been informed of project developments. An initial draft of the Development Document was sent to all participants and comments were solicited on that report. The following are the principal agencies and groups consulted: (1) Effluent Standards and Water Quality Information Advisory Committee (established under section 515 of the Act); (2) all State and U.S. Territory Pollution Control Agencies; (3) the Edison Electric Institute; (4) American Public Power Association; (5) Atomic Industrial Forum; (6) Tennessee Valley Public Power Association; (7) The American Society of Mechanical Engineers; (8) Hudson River Sloop Restoration, Inc.; (9) The Conservation Foundation; (10) Environmental Defense Fund, Inc.; (11) Natural Resources Defense Council; (12) The American Society of Civil Engineers; (13) Water Pollution Control Federation; (14) National Wildlife Federation; (15) The Isaac Walton League of America; (16) U.S. Department of the Interior; (17) U.S. Department of Commerce; (18) U.S. Department of the Treasury; (19) U.S. Department of Agriculture; (20) U.S. Water Resources Council; (21) U.S. Atomic Energy Commission; (22) U.S. Department of Defense; (23) Tennessee Valley Authority;

and (24) U.S. Department of Housing and Urban Development.

The following organizations and individuals responded with comments: (1) Effluent Standards and Water Quality Information Advisory Committee; (2) Arizona State Department of Health; (3) the Honorable Mike McCormack; (4) Mississippi Power and Light Company; (5) Northeast Utilities; (6) U.S. Department of the Treasury; (7) Atomic Industrial Forum, Inc.; (8) Delaware River Basin Commission; (9) Northern States Power Company; (10) Mid-Continent Area Power Pool Coordination Center; (11) Baltimore Gas and Electric Company; (12) Montana-Dakota Utilities Company; (13) Edison Electric Institute; (14) E. B. Pusley; (15) West Texas Utilities Company; (16) U.S. Atomic Energy Commission; (17) U.S. Water Resources Council; (18) Southern Electric Generating Company; (19) Consumers Power Company; (20) American Electric Power Service Corporation; (21) Virginia Electric and Power Company; (22) Duke Power Company; (23) Commonwealth Edison; (24) Southern Services, Inc.; (25) Public Service Electric and Gas Company; (26) John Eric Edinger, Ph.D.; (27) Union Electric Company; (28) Tennessee Valley Authority; (29) Los Angeles Department of Water and Power; (30) Bechtel Power Corporation; (31) North Central Missouri Electric Cooperative, Inc.; (32) New York Power Pool; (33) U.S. Department of Agriculture; (34 Gulf Power Company; (35) Mississippi Power Company; (36) Texas Electric Service Company; (37) Consolidated Edison Company of New York, Inc.; (38) Georgia Power Company; (39) NUS Corporation; (40) Alabama Power Company; (41) Arkansas Power and Light Company; (42) Texas Power and Light Company; (43) Resources Conservation Corporation; (44) American Public Power Association; (45) National Advisory Committee on Oceans and Atmosphere; (46) Tennessee Valley Public Power Association; (47) Southern California Edison Company; (48) Detroit Edison; (49) New Orleans Public Service, Inc.; (50) Southwestern Electric Power Company; (51) Allegheny Power Service Corporation; (52) City Public Service Board of San Antonio; (53) Southern Central Power Company; (54) U.S. Department of Defense; (55) U.S. Department of Commerce; (56) Interlakes, Inc.; (57) Florida Power and Light Company; (58) Dallas Power and Light Company; (59) Federal Power Commission; (60) Natural Resources Defense Council, Inc.; (61) Cajun Electric Power Corporation, Inc.; (62) Pacific Gas and Electric Company; (63) Golden Valley Electric Association, Inc.; (64) Hudson River Fisherman's Association; (65) Tampa Electric Company; (66) North Pine Electric Corporation, Inc.; (67) Carteret-Craven Electric Membership Corporation; (68) Public Service Company of New Hampshire; (69) Roanoke Electric Membership Corporation; (70) Plains Electric Generation and Transmission Cooperative, Inc.; (71) Tri-County Rural Electric Cooperative, Inc.; (72) Union Rural Electric Association, Inc.; (73) South Texas Electric Cooperative, Inc.; (74) Western Illinois Power Cooperative, Inc.; (75) Burns and Roe, Inc.; (76) Association of Illinois Electric Cooperatives; (77) Rural Electric Convenience Cooperative Company; (78) People's Cooperative Power Association, Inc.; (79) Jefferson Davis Electric Cooperative, Inc.; (80) Edgecombe-Martin County Electric Membership Corporation; (81) Burke Divide Electric Cooperative; (82) Renville Sibley Cooperative Power Association; (83) State of Alaska Department of Environmental Conservation; (84) State of California Water Resources Control Board; (85) State of Colorado Department of Health; (86) Georgia Department of Natural Resources; (87) State of Hawaii Department of Health; (88) Illinois Environmental Protection Agency; (89) Kentucky Department of Natural Resources and Environmental Protection; (90) State of Maryland Department of Natural Resources; (91) State of Michigan Department of Natural Resources; (92) State of Nebraska Department of Environmental Control; (93) North Carolina Department of Natural and Economic Resources; (94) South Carolina Department of Health and Environmental Control; (95) Texas Water Quality Board; (96) Crawford Electric Cooperative; (97) Utah Power and Light Company; (98) Dixie Electric Membership Corporation; (99) State of Ohio Environmental Protection Agency; (100) Newberry Electric Cooperative, Inc.; (101) Basin Electric Power Cooperative; (102) Pennsylvania Department of Environmental Resources; (103) U.S. Department of the Interior; (104) Ebasco Services, Inc.; (105) Jo-Carroll Electric Cooperative, Inc.; (106) Missouri Clean Water Commission; (107) Pierce-Pepin Electric Cooperative; and (108) Tri-County Electric Cooperative.

The primary issues raised in the development of these proposed effluent limitations guidelines and standards of performance and the treatment of these issues herein are as follows:

(1) Many groups questioned the characterization of all heat as a pollutant. Section 502(b) of the Act, however, includes heat within the definition of "pollutant". The effects of transference of heat to water on the physical and chemical equilibrium of the aquatic environment are well documented. See the report on thermal discharges submitted to Congress by the Administrator in July, 1973 pursuant to section 104(t) of the Act. Because of the availability of demonstrated technology to substantially eliminate thermal discharges from steam electric generating plants, the Agency has determined to include effluent limitations on heat.

(2) Many groups questioned the advisability of nationally uniform effluent limitations prescribing no discharge of heat (except blowdown) in view of the costs required compared to the benefits received from thus protecting the aquatic environment. Sections 304(b) and 306 of the Act require the Administrator to provide nationally uniform technology-based effluent limitations guidelines. A separate provision of the Act, Section 316 (a), affords an opportunity for individual dischargers to obtain exceptions to these uniform technology-based standards upon a showing that less stringent limitations on heat will still adequately protect the aquatic environment. The Agency intends to propose regulations implementing Section 316(a) in conjunction with the issuance of the regulations proposed below.

(3) Many commenters questioned the use of thermal units of heat discharged rather than the temperature of the discharged stream as the basis for the standard, since environmental considerations are generally based on temperature. The application of a technology-based standard is more appropriately described by characteristics relevant to the quantities of pollutant requiring reduction and the technology for achieving that effluent reduction, rather than criteria for environmental judgments. In the case of waste heat from steam electric powerplants, heat rather than temperature more suitably satisfies this requirement. A more extended technical discussion of the alternative thermal parameters, and the reasons for selecting heat appears at Section BVI of the Development Document.

(4) Many comments questioned the lack of consideration of nonrecirculating condenser cooling systems with "mixing zones" as a candidate technology to provide the basis for the guidelines and standards. These systems do not reduce the quantities of heat discharged in the effluent. Moreover, since a substantial number of units presently employ external cooling means (typically evaporative cooling towers) which virtually eliminate the discharge of heated effluent, mixing zones simply cannot be characterized as the "best practicable technology currently available" much less as the "best available technology economically achievable".

(5) It was suggested that helper systems to achieve partial removal of effluent heat should be considered. Helper systems have been applied only to meet discharge temperature requirements based on environmental criteria. In accomplishing this the effluent heat removals vary considerably throughout the year. No helper system has been designed and operated to achieve a steady level of effluent heat reduction year round. Furthermore, in many cases the application of these systems to achieve significant heat removals would cause more damage to organisms brought into the cooling water system than would a closed-cycle system for essentially 100 percent heat removal due to the higher intake water requirement.

(6) Other factors (such as the type of coal used, and raw water quality) were suggested as appropriate bases for further subcategorization. The industry has not been subcategorized on the basis of these factors nor are they intended as

grounds for variances from the generally applicable limitations because their effects are mainly on quantities of residuals rather than on effluent reduction levels achievable or the costs associated with various levels of reduction.

(7) The validity of the cost estimates for replacing an existing nonrecirculating cooling water system with a closed-cycle system was questioned. Since very few such replacements have actually been made, since various accounting systems were used for reporting costs, and since there were differences in site-related factors in each case, the existing hard data encompass a wide range of total costs. Numerous cost estimates have been made by industry for the purposes of environmental impact statements and for other purposes. These estimates also encompass a wide range of total costs. The EPA estimates are correlations based on all available data. The actual costs may vary significantly from unit to unit but the variabilities would be smaller from plant to plant and from system to system. Furthermore, the EPA judgments pertain only to the affected units and not to all units, as is assumed in some industry estimates.

(8) Industry representatives and other groups suggested that the Agency, in developing the effluent limitations guidelines, should consider the costs of implementing the guidelines in relation, not only to the effluent reduction benefits thereby achieved, but also to the imputed environmental benefits attributable to such reductions. The Agency has estimated and carefully considered the relationship between cost and effluent reduction in specifying the effluent limitations guidelines. Section 304(b)(1)(B) requires no additional analysis. Moreover, while it is not feasible to quantify in economic terms, particularly on a national basis, the costs resulting from the discharge of heat and other pollutants from electric generating plants to our Nation's waterways, these pollutants can have substantial and damaging impacts on the quality of water and therefore on its capacity to sustain healthy populations of wildlife, fish and other aquatic wildlife and on its suitability for industrial, recreational and drinking water supply uses.

(9) Some reviewers felt that the discharge of total dissolved solids could be eliminated by the application of available technology involving recycle of waste water with concentration and evaporation to dryness of the final effluents. Technology is demonstrated and available for treating cooling tower blowdown in this manner. However, the total dissolved solids discharge in cooling tower blowdown are primarily in the same amount as contained in the intake to the station for the purposes of cooling tower make-up water. Furthermore, the large quantities of solids removal resulting from application of this technology would require suitable land disposal. On the other hand, application of this technology to low volume waste water other than cooling system blowdown would remove significant quantities of pollutants added by the operation of the plant. While concentration and evaporation of the "chemical" waste is not generally practiced in the steam electric generating industry, the technology necessary is transferable, based upon the wide application of related technology in the chemical processing industry.

(10) Some reviewers felt that effluent limitations should be imposed on certain heavy metals, such as mercury and lead. Effluent standards were not set for these parameters since the generally applicable technologies available to attain the effluent limitations proposed for pH, total suspended solids, total copper, total iron, etc., will adequately remove these constituents as well as those for which effluent standards are proposed.

(11) Some reviewers questioned whether a requirement that all large base-load plants achieve no discharge of heat by 1977 could be met, considering factors of equipment availability and time necessary for design and construction of facilities. Cooling tower construction itself would probably present no significant obstacle due to use of field erection practices rather than assembly line production. The availability of the engineering manpower required by the suppliers of cooling towers could, however, prove limiting. The proposed regulations should alleviate this problem since the requirements for attainment of no heat discharge take effect for generating units of various capacities over a period of several years. Moreover, the market could be expected to attract new suppliers able to meet the increased demand. Demand for towers could be offset, of course, to the extent that alternative means such as cooling ponds prove feasible.

(12) Some reviewers felt that no serious effort had been made to determine whether zero discharge of heat or the mechanical draft cooling towers which may be employed to achieve it represent the optimum use of all resources. The Act does not require such an analysis; to some extent the basic judgment that discharges of pollutants to the Nation's waters should be reduced to levels attainable by specified levels of technology has already been made by Congress in enacting the 1972 Amendments to the Act.

It should be emphasized that the technical basis of the proposed effluent limitations for heat is closed-cycle evaporative cooling with blowdown. Because of their more universal applicability, mechanical draft cooling towers were selected to provide a basis for the overall cost analysis, fuel consumption analysis, non-water quality environmental impact analysis, economic impact analysis and the site-by-site evaluation of factors of land availability, salt water drift and other factors. Any otherwise environmentally acceptable means (and there are several alternatives) can be applied by the discharger to meet the imposed effluent limitations.

(13) Many comments referred to the important question of increased consumption of fuel. To the extent that fuel consumption is a national problem, pollution control should not have to bear a burden of justification any more stringent than other uses. In any case, the maximum fuel consumption required to implement the proposed standards is approximately 0.2 percent of the national level of fuel consumption.

(14) Industry groups felt that the application of evaporative cooling devices to base-load units could not be achieved by 1977 without serious disruption of the national power supply. No definition of "serious disruption" was offered. As discussed above, postponed retirement of older units, installation of combustion turbines for replacement capacity, and the achieving of a higher level of reliability coordination than is presently planned could all serve to offset increments of reduced reserve margin resulting from application of evaporative cooling systems. Moreover, the regulation as proposed does not require all base-load units to achieve no discharge by 1977. Instead, as explained above, the no discharge requirement becomes effective over a period of six years commencing in July 1977.

(15) Some reviewers questioned the advisability of requiring a technology that would significantly increase the national water consumption over present levels. While water consumption at individual sites might increase, it is not known that a significant national water debt would result since much of the evaporated water would precipitate through the natural water cycle.

Interested persons may participate in this rule-making by submitting written comments in triplicate to the EPA Information Center (A–107), Environmental Protection Agency, Washington, D.C. 20460, Attention: Mr. Philip B. Wisman. Comments on all aspects of the proposed regulations are solicited. In the event comments are in the nature of criticisms as to the adequacy of data which is available, or which may be relied upon by the Agency, comments should identify and, if possible, provide any additional data which may be available and should indicate why such data is essential to the development of the regulations. In the event comments address the approach taken by the Agency in establishing an effluent limitation guideline, or standard of performance, EPA solicits suggestions as to what alternative approach should be taken and why and how this alternative better satisfies the detailed requirements of sections 301, 304(b), 306 and 307 of the Act.

A copy of all public comments will be available for inspection and copying at the EPA Information Center, Room 227, West Tower, Waterside Mall, 401 M Street, S.W., Washington, D.C. A copy of preliminary draft contractor reports, the Development Document and economic study referred to above and certain supplementary materials supporting the study of the industry concerned will also be maintained at this location for public review and copying. The EPA information regulation, 40 CFR Part 2, provides

that a reasonable fee may be charged June 3, 1974, will be considered. Steps previously taken by the Environmental for copying.

All comments received on or before Protection Agency to facilitate public response within this time period are outlined in the advance notice concerning public review procedures published on August 6, 1973 (38 FR 21202).

In consideration of the foregoing, it is hereby proposed to amend 40 CFR Chapter I to add a new Part 423, to read as set forth below.

Dated: February 20, 1974.

JOHN QUARLES,
Acting Administrator.

PART 423—EFFLUENT LIMITATIONS GUIDELINES FOR EXISTING SOURCES AND STANDARDS OF PERFORMANCE AND PRETREATMENT STANDARDS FOR NEW SOURCES FOR THE STEAM ELECTRIC POWER GENERATING CATEGORY

Sec.

§ 423.10 Applicability; description of steam electric power generating category.

The provisions of this part are applicable to discharges resulting from the operation of an establishment primarily engaged in the generation of electricity for distribution and sale, which generation results primarily from a process utilizing fossil-type fuel (coal, oil, gas), or nuclear fuel in conjunction with a thermal cycle employing the steam-water system as the thermodynamic medium.

§ 423.11 Special definitions.

For the purposes of this part:

(a) The term "base-load unit" shall mean any unit except a generating unit that is one or more of the following:

(1) A generating unit which, according to the Federal Power Commission Form 67 Steam Electric Plant Air and Water Quality Control Data for the Year Ended December 31, 1973, had an average boiler capacity factor during the year of less than 60 percent, except in the case where the accuracy of the Form 67 data is questioned. In any case in which the average boiler capacity factor is not reported in Federal Power Commission Form 67 for the year ended December 31, 1973, or in which the accuracy of the Form 67 data is questioned, the average boiler capacity factor for that generating unit shall be determined according to the data recorded on the operating record book or log of that unit for the entire calendar year 1973.

(2) A generating unit (i) for which the average boiler capacity factor is not reported in Federal Power Commission Form 67 for the year ended December 31, 1973, and operating records are not available for the entire calendar year 1973, (ii) which has one or more of the design characteristics of non-base-load units, and (iii) which can be demonstrated by the owner or operator not to be planned to be operated to generate more than 31,600,000 kilowatt-hours (gross) per megawatt of nameplate generating capacity during the six most productive calendar years, which need not be consecutive, of its useful service life including both past and future service.

(3) A large generating unit for which a retirement date on or before July 1, 1986, is committed or proposed, as most recently reported to the Federal Power Commission by the appropriate reliability coordinating council, agreement, network, pool, or group as required annually pursuant to Federal Power Commission, Order No. 383–2, Docket No. R–362.

In the case in which said unit is in a system that is not a member of a reliability coordinating council, agreement, network, pool, or group, the retirement date for that generating unit shall be determined on the basis of evidence submitted by the owner or operator of that unit.

(4) A small generating unit for which a retirement date on or before July 1, 1989, or earlier is committed or proposed, as most recently reported to the Federal Power Commission by the appropriate reliability coordinating council, agreement, network, pool, or group as required annually pursuant to Federal Power Commission, Order No. 383–2, Docket No. R–362.

In the case in which said unit is in a system that is not a member of a reliability coordinating council, agreement, network, pool, or group, the retirement date for that generating unit shall be determined on the basis of evidence submitted by the owner or operator of that unit.

(b) The term "cyclic unit" shall mean any unit except a generating unit that is one or more of the following:

(1) A base-load unit.

(2) A generating unit which, according to the Federal Power Commission Form 67 Steam-Electric Plant Air and Water Quality Control Data for the Year Ended December 31, 1973, has an average boiler capacity factor during the year of 20 percent or less, except in the case where the accuracy of the Form 67 data is questioned. In any case in which the average boiler capacity factor is not reported in Federal Power Commission Form 67 for the year ended December 31, 1973, or in which the accuracy of the Form 67 data is questioned, the average boiler capacity factor for that generating unit shall be determined according to the data recorded on the operating record book or log of that unit for the entire calendar year 1973.

(3) A generating unit (i) for which the average boiler capacity factor is not reported in Federal Power Commission Form 67 for the year ended December 31, 1973, and operating records are not available for the entire calendar year 1973, (ii) which has one or more of the design characteristics of non-base-load units, and (iii) which can be demonstrated by the owner or operator not to be planned to be operated to generate more than 10,500,000 kilowatt-hours (gross) per megawatt of nameplate generating capacity during the six most productive calendar years, which need not be consecutive, of its useful service life including both past and future service.

(4) A generating unit for which a retirement date on or before July 1, 1989, is committed or proposed, as most recently reported to the Federal Power Commission by the appropriate reliability coordinating council, agreement, network, pool, or group as required annually pursuant to Federal Power Commission Order No. 383–2, Docket No. R–362.

In the case in which said unit is in a system that is not a member of a reliability coordinating council, agreement, network, pool, or group, the retirement date for that generating unit shall be determined on the basis of evidence submitted by the owner or operator of that unit.

(c) The term "peaking unit" shall mean any unit except a generating unit that is one or more of the following:

(1) A base-load unit or a cyclic unit.

(2) A generating unit for which a retirement date on or before July 1, 1989, is committed or proposed, as most recently reported to the Federal Power Commission by the appropriate reliability coordinating council, agreement, network, pool, or group as required annually pursuant to Federal Power Commission Order No. 383–2, Docket No. R–326. In the case in which said unit is in a system that is not a member of a reliability coordinating council, agreement, network, pool, or group, the retirement date for that generating unit shall be determined on the basis of evidence submitted by the owner or operator of that unit.

(d) The term "large unit" shall mean a unit which is both (1) a part of a plant with a rated generating capacity of 25 megawatts or more and (2) a part of an electric utility system with a generating capacity of 150 megawatts or more.

(e) The term "blowdown" shall mean the minimum discharge of recirculating water for the purpose of discharging materials contained in the water, the further buildup, otherwise, of which would cause concentration in amounts exceeding limits established by best engineering practice.

(f) The term "free available chlorine" shall mean the value obtained using the amperometric titration method for free available chlorine described in "Standard Methods for the Examination of Water and Wastewater" 13th Edition, 1971, Method 144B, page 112.

(g) The term "design characteristics of non-baseload units" shall mean the

following, provided that the unit is not coal-fired: (i) no reheat stage, (ii) fewer than five feedwater heaters, (iii) a stream throttle pressure less than 137 atm. (2000 psig), and (iv) a steam throttle temperature less than 538°C (1000°F).

(h) The term "sufficient land" shall mean 100 sq. m. (1100 sq. ft.) or more per megawatt of nameplate generating capacity.

(i) The term "intermediate-volume waste sources" shall mean blowdown from recirculating main condenser cooling water systems, waste water from nonrecirculating ash handling systems, and waste water from nonrecirculating wet-scrubber air pollution control systems.

(j) The term "low-volume waste sources" shall mean, taken collectively as if from one source, waste water from boiler blowdown, ion exchange water treatment wastes, water treatment evaporator blowdown, boiler tube cleaning, boiler fireside cleaning, air preheater cleaning, laboratory and sampling streams, floor drainage, cooling tower basin cleaning wastes, blowdown from recirculating ash handling systems, blowdown from recirculating wet-scrubber air pollution control systems, stack cleaning, miscellaneous equipment cleaning, recirculating house service water systems, and other waste sources of comparable volume.

(k) The term "small unit" shall mean a unit which is not large.

(l) The term "daily average" shall mean the average of daily values for thirty consecutive days. When waste water from the source in question is not discharged on a particular day during the thirty consecutive days, the daily value for that day shall not be included in the average.

(m) The term "FLOW" shall mean the daily flow, 1, of waste water from the source (e.g. recirculating cooling water systems, low-volume waste sources, nonrecirculating ash sluicing systems, nonrecirculating wet-scrubber air pollution control system) in question.

(n) The term "recirculating system" shall mean a system from which there is no discharge of waste water other than blowdown.

(o) The term "nonrecirculating system" shall mean a system that is not a recirculating system.

§ 423.12 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

In establishing the limitations set forth in this section, the Environmental Protection Agency took into account all information it was able to collect, develop and solicit with respect to factors (such as age and size of plant, utilization of facilities, raw materials, manufacturing processes, non-water quality environmental impacts, control and treatment technology available, energy requirements, costs) which can affect the industry subcategorization and effluent limitations established. It is, however, possible that data which would affect these limitations have not been available and, as a result, these limitations should be adjusted for certain plants in this industry. An individual discharger or other interested person may submit evidence to the Regional Administrator (or to the State, if the State has the authority to issue NPDES permits) that factors relating to the equipment or facilities involved, the process applied, or other such factors related to such discharger are fundamentally different from the factors considered in the establishment of the guidelines. On the basis of such evidence or other available information, the Regional Administrator (or the State) will make a written finding that such factors are or are not fundamentally different for that facility compared to those specified in the Development Document. If such fundamentally different factors are found to exist, the Regional Administrator or the State shall establish for the discharger effluent limitations in the NPDES permit either more or less stringent than the limitations established herein, to the extent dictated by such fundamentally different factors. Such limitations must be approved by the Administrator of the Environmental Protection Agency. The Administrator may approve or disapprove such limitations, specify other limitations, or initiate proceedings to revise these regulations.

The following limitations constitute the quantity or quality of pollutants or pollutant properties which may be discharged after application of the best practicable control technology currently available by a point source subject to the provisions of this part:

(a) (1) There shall be no discharge of heat from a large base-load unit for which construction is completed on or after July 1, 1977, except that heat may be discharged in blowdown from recirculating cooling water systems provided that the temperature at which the blowdown is discharged does not exceed at any time the lowest temperature of the recirculating cooling water prior to the addition of make-up water.

(2) The limitation in paragraph (a) (1) of this section shall not apply where the owner or operator of a unit otherwise subject to it can demonstrate:

(i) That sufficient land for mechanical draft evaporative cooling towers is not available on the premises or on adjoining property under the ownership or control of the owner or operator, as of the date on which these regulations were proposed, with some amount of land use reassignment and no other available alternative evaporative cooling system is practicable, or

(ii) That total dissolved solids concentrations in available intake cooling water exceed 30,000 mg/l, and land not owned or controlled by the owner or operator is located within 150 m (500 ft) downwind (prevailing) of all practicable locations for mechanical draft cooling towers and no other alternative evaporative cooling system is practicable.

(3) The limitations in paragraph (a) (1) shall not apply to discharges from nonrecirculating house service water systems in nuclear-fueled generating units, and to waste water discharges from low-volume waste sources or intermediate volume waste sources other than blowdown from recirculating cooling water systems.

(b) There shall be no discharge of pollutants from clarification water treatment and softening water treatment.

(c) Concentrations of free available chlorine in waste water discharged from nonrecirculating and recirculating cooling water systems shall not exceed average concentrations of 0.2 mg/l and maximum concentrations of 0.5 mg/l at the outlet corresponding to an individual unit during a maximum of one 2-hour period a day. No discharge of total residual chlorine is otherwise allowed. No discharge of total residual chlorine is allowed from one unit while another unit at the same plant is being chlorinated. When it can be demonstrated by the owner or operator that higher levels of free available chlorine or more lengthy total periods of application are required to maintain a reasonable level of condenser tube cleanliness for nonrecirculating cooling water systems, discharges of amounts of free available chlorine in excess of the above limitations which are necessary to maintain such level of condenser tube cleanliness may be permitted.

(d) There shall be no discharge of polychlorinated biphenyl transformer fluid.

(e) Total iron and total copper in waste water from low-volume waste sources shall not exceed daily average amounts, mg, of 1 mg/l total copper x FLOW and 1 mg/l total iron x FLOW.

(f) (1) Total suspended solids in waste water from low-volume waste sources shall not exceed daily average amounts, mg, of 15 mg/l x FLOW or a maximum amount, mg, for any one day of 100 mg/l x FLOW.

(2) Total suspended solids in waste water from recirculating cooling water systems shall not exceed daily average amounts, mg, of 15 mg/l x FLOW or a maximum amount, mg, for any one day of 100 mg/l x FLOW.

(3) Total suspended solids in waste water from nonrecirculating ash sluicing systems and from nonrecirculating wet-scrubber air pollution control systems shall not exceed daily average amounts, mg, of 15 mg/l x FLOW or a maximum amount, mg, for any one day of 100 mg/l x FLOW, except that amounts, mg, in excess of the above limitations are allowed only to the extent that the amount, mg, of total suspended solids in waste water from nonrecirculating ash sluicing systems and from nonrecirculating wet-scrubber air pollution control systems does not exceed the amount, mg, of total suspended solids brought into the plant, over the same time span, for use in conjunction with the nonrecirculating ash sluicing system or the nonrecirculating wet-scrubber air pollution control system, respectively.

(4) Total suspended solids in waste water run-off from rainfall run-off sources, taken collectively as if from one source, including coal pile drainage, yard and roof drainage, and run-off from construction activities shall not exceed average concentrations of 15 mg/l during the time span of each run-off event or a maximum concentration of 100 mg/l at any time.

(g) The pH value of all streams discharged, with the exception of nonrecirculating cooling water, shall be in the range of 6.0 to 9.0 at all times.

(h) Waste waters discharged from the sanitary system shall meet applicable standards for publicly-owned treatment works specified in 40 CFR Part 133.

(i) No debris from the intake means shall be discharged.

(j) There is no effluent limitation on waste waters from the radiological waste system presented in this regulation.

(k) (1) Oil and grease in waste water from low-volume waste sources shall not exceed daily average amounts, mg, of 10 mg/l x FLOW, or a maximum concentration of 20 mg/l at any time.

(2) Oil and grease in waste water from recirculating cooling water systems shall not exceed daily average amounts, mg, of 10mg/l x FLOW.

(3) Oil and grease in waste water from rainfall run-off sources, taken collectively as if from one source, shall not exceed daily average concentrations of 10 mg/l during the time span of each run-off event or a maximum concentration of 20 mg/l at any time.

(4) Oil and grease in waste waters from nonrecirculating ash sluicing systems and from nonrecirculating wet-scrubber air pollution control system shall not exceed daily average amounts, mg, of 10 mg/l x FLOW.

(l) Where waste waters from one source with effluent limitations for a particular pollutant are combined with other waste waters (such as the combination of waste water from low-volume sources with nonrecirculating cooling water), the effluent limitation, mg (or mg/l), for the particular pollutant, excluding pH, for the combined stream shall be the sum of the effluent limitations (for concentration limits apply appropriate dilution factors) for each of the streams which contribute to the combined stream, except that the actual amount, mg (or mg/l), of the pollutant in a contributing stream will be used in place of the effluent limitation for those contributing streams where the actual amount, mg (or mg/l), of the pollutant is less than the effluent limitation, mg (or mg/l), for the contributing stream.

§ 423.13 Effluent limitation guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

The following limitations constitute the quantity or quality of pollutants or pollutant properties which may be discharged after application of the best available technology economically achievable by a point source subject to the provisions of this Part:

(a) (1) There shall be no discharge of heat, except that heat may be discharged in blowdown from the recirculating condenser cooling water system provided that the temperature at which the blowdown is discharged does not exceed at any time the lowest temperature of the recirculating cooling water prior to the addition of make-up water.

(2) The limitation set forth in subparagraph (a) (1) shall be achieved as follows:

(i) No later than July 1, 1978, by base-load units presently in operation or on which construction is completed prior to July 1, 1977, with a nameplate generating capacity of 500 megawatts or greater.

(ii) No later than July 1, 1979, by base-load units presently in operation or on which construction is completed prior to July 1, 1977, with a nameplate generating capacity of less than 500 megawatts, but greater than 299 megawatts.

(iii) No later than July 1, 1980, by all other large base-load units.

(iv) No later than July 1, 1983, by all other units, including cyclic units, peaking units and small base-load units.

(3) The limitation set forth in subparagraph (a) (1) shall not apply to units as to which the owner or operator can demonstrate that (1) sufficient land for mechanical draft evaporative cooling towers is not available on the premises, with a reasonably significant amount of land use reassignment or on adjoining properties, whether or not owned or controlled by the owner or operator, and (2) none of the available alternative evaporative cooling systems is practicable.

(4) The limitations set forth in subparagraph (a) (1) shall not apply to discharges from nonrecirculating house service water systems in nuclear-fueled units.

(b) The effluent limitations set forth in § 423.12 (c), (f) (2), (g), (h), (i), (k) (2), and (k) (3) shall apply to discharges of pollutants from recirculating and nonrecirculating cooling water, and sanitary wastes, except that no discharge is allowed of total residual chlorine from recirculating cooling water systems shall that total chromium, total phosphorus (as P), and total zinc in waste water from recirculating cooling water systems shall not exceed daily average amounts, mg, of 0.2 mg/l total chromium x FLOW, total phosphorus (as P) of 5 mg/l x FLOW and 1 mg/l of total zinc x FLOW.

(c) (1) There shall be no discharge of waste water from run-off waste sources, taken collectively as if from one source, unless the first 15 minutes of rainfall run-off are segregated from the remainder during any rainfall event.

(2) Total suspended solids and oil and grease in waste waters from the first 15 minutes of rainfall run-off from any rainfall event, taken collectively as if from one source, shall not exceed average concentrations of 15 mg/l and 10 mg/l, respectively, and maximum concentrations of 100 mg/l and 20 mg/l, respectively.

(3) Total suspended solids and oil and grease in waste waters from all but the first 15 minutes of rainfall run-off from any rainfall event, taken collectively as if from one source, shall not exceed average concentrations of 15 mg/l and 10 mg/l, respectively, and maximum concentrations of 100 mg/l and 20 mg/l, respectively.

(d) There shall be no discharge of pollutants other than those controlled by paragraphs (a), (b), and (c) of this section.

(e) There is no effluent limitation on waste waters from the radiological waste system presented in this regulation.

(f) Where waste waters from one source, with effluent limitations for a particular pollutant, are combined with other waste waters (such as the combination of waste water from low-volume waste sources with nonrecirculating cooling water), the effluent limitation, mg (or mg/l), for the particular pollutant, excluding pH, for the combined stream shall be the sum of the effluent limitations (for concentration limits apply appropriate dilution factors) for each of the streams which contribute to the combined stream except that the actual amount, mg (or mg/l), of the pollutant in a contributing stream will be used in place of the effluent limitation for those contributing streams where the actual amount, mg (or mg/l), of the pollutant is less than the effluent limitation, mg (or mg/l), for the contributing stream.

§ 423.14 [Reserved]

§ 423.15 Standards of performance for new sources.

The following limitations constitute the quantity or quality of pollutants or pollutant properties which may be discharged after application of standards of performance by a new source subject to the provisions of this part:

(a) There shall be no discharge of heat by any new sources, except that heat may be discharged in blowdown from recirculating cooling water systems provided that the temperature at which the blowdown is discharged does not exceed at any time the lowest temperature of the recirculating cooling water prior to the addition of make-up water.

(b) The effluent limitations set forth in § 423.12(b) through (n) shall apply to discharges of pollutants other than heat, except as provided in § 423.15(c).

(c) There shall be no discharge of:

(1) corrosion inhibitors in blowdown from recirculating cooling water systems;

(2) total residual chlorine, or other chemical additives used for biological control in main condenser tubes from nonrecirculating cooling water systems;

(3) pollutants from systems providing sluicing of bottom ash from the combustion of oil or fly ash from the combustion of any fuel; or

(4) pollutants from nonrecirculating ash sluicing systems.

(d) Where waste waters from one source with effluent limitations for a particular pollutant are combined with other waste waters (such as the combination of waste water from low-volume waste soruces with nonrecirculating cooling water), the effluent limitation, mg (or mg/l), for the particular pollutant, excluding pH, for the combined stream shall be the sum of the effluent limitations (for concentration limits apply appropriate dilution factors) for each of the streams which contribute to the combined stream except that the actual amount, mg (or mg/l), of the pollutant in a contributing stream will be used in place of the effluent limitation for those contributing streams where the actual amount, mg (or mg/l), of the pollutant is less than the effluent limitation, mg (or mg/l), for the contributing stream.

§ 423.16 Pretreatment standards for new sources.

The pretreatment standards under section 307(c) of the Act, for a source within the steam electric power generating category which is an industrial user of publicly owned treatment works, (and which would be a new source subject to section 306 of the Act, if it were to discharge pollutants to navigable waters), shall be the standard set forth in 40 CFR Part 128 except that for the purposes of this section, § 128.133 shall be amended to read as follows:

In addition to the prohibitions set forth in § 128.131 of this title, the pretreatment standards for incompatible pollutants introduced into a publicly owned treatment works by a major contributing industry shall be the standard of performance for new sources specified in § 423.15, 40 CFR, Part 423, provided that, if the publicly owned treatment works which receives the pollutants is committed, in its NPDES permit, to remove a specified percentage of any incompatible pollutant, the pretreatment standard applicable to users of such treatment works shall be correspondingly reduced for that pollutant.

[FR Doc.74-4814 Filed 3-1-74;8:45 am]