

section either directly from farms or by transfer from supply plants operated by the cooperative association and from plants of the cooperative association for which pool plant status has been requested under this paragraph subject to the following conditions:

(1) The plant does not qualify as a pool plant under paragraph (a) or (b) of this section or under comparable provisions of another Federal order; and

(2) The plant is approved by a duly constituted regulatory agency for the handling of milk approved for fluid consumption in the marketing area.

(d) The shipping standards in paragraphs (b) and (c) of this section may be increased or decreased up to 10 percentage points by the Director of the Dairy Division if the Director finds such revision is necessary to obtain needed shipments or to prevent uneconomic shipments. Before making such a finding the Director shall investigate the need for revision, either at the Director's initiative or at the request of interested persons. If the investigation shows that a revision might be appropriate, the Director shall issue a notice stating that revision is being considered and inviting data, views, and arguments. If a plant which would not otherwise qualify as a pool plant during the month qualifies as a pool plant because of a reduction in shipping standards pursuant to this paragraph, such plant shall be a nonpool plant for such month if the operator files a written request for nonpool plant status with the market administrator at the time the report is filed for such plant pursuant to § 1138.30.

(e) The term *pool plant* shall not apply to the following plants:

(1) A producer-handler plant, a governmental agency plant, or an exempt plant.

(2) A distributing plant qualified pursuant to paragraph (a)(1) of this section which also meets the pooling requirements of another Federal order and from which there is a greater quantity of route disposition, except filled milk, during the month in such other Federal order marketing area than in this marketing area, except that if such plant was subject to all the provisions of this part in the immediately preceding month, it shall continue to be subject

to all the provisions of this part until the third consecutive month in which a greater proportion of its route disposition, except filled milk, is made in such other marketing area unless, notwithstanding the provisions of this paragraph, it is regulated under such other order. On the basis of a written application made by the plant operator at least 15 days prior to the date for which a determination of the Secretary is to be effective, the Secretary may determine that the route disposition in the respective marketing areas to be used for purposes of this paragraph shall exclude (for a specified period of time) route disposition made under limited term contracts to governmental bases and institutions;

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

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

(5) A plant qualified pursuant to paragraph (b) of this section which has automatic pooling status under another Federal order.

EFFECTIVE DATE NOTE: At 60 FR 50089, Sept. 28, 1995, in § 1138.7(a)(1), the words "including producer milk diverted from the plant," and in § 1138.7(c) introductory text, the words "35 percent or more of the producer," were suspended, effective Oct. 1, 1995 through Sept. 31, 1997.

§ 1138.8 Nonpool plant.

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

(a) *Other order plant* means a plant that is fully subject to the pricing and

pooling provisions of another order issued pursuant to the Act.

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

(c) *Partially regulated distributing plant* means a distributing plant that does not qualify as a pool plant and is not an other order plant, a governmental agency plant, or a producer-handler plant.

(d) *Unregulated supply plant* means a nonpool plant, except an other order plant, a governmental agency plant, or a producer handler plant, from which fluid milk products are moved during the month to a pool plant qualified pursuant to § 1138.7.

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

(f) *Exempt plant* means any plant that has monthly route disposition of 150,000 pounds or less that may be exempt from the pricing and pooling provisions of this order if the handler operating the plant files timely reports as specified by the market administrator and maintains adequate books and records that are made available to the market administrator which will enable determination of the exempt status of such plant.

§ 1138.9 Handler.

Handler means: (a) Any person who operates a pool plant;

(b) Any cooperative association with respect to the milk of producers which it causes to be diverted pursuant to § 1138.13 for the account of such cooperative association;

(c) Any cooperative association with respect to milk that it receives for its account from the farm of a producer for delivery to a pool plant of another handler in a tank truck owned and operated by, or under the control of, such cooperative association, unless both the cooperative association and the operator of the pool plant notify the market administrator prior to the time that such milk is delivered to the pool

plant that the plant operator will be the handler for such milk and will purchase such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples. Milk for which the cooperative association is the handler pursuant to this paragraph shall be deemed to have been received by the cooperative association at the location of the pool plant to which such milk is delivered;

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

(e) Any person who is a producer-handler or who operates a governmental agency or exempt plant; and

(f) Any person who operates an other order plant described in § 1138.7(e) or an unregulated supply plant.

§ 1138.10 Producer-handler.

Producer-handler means any person:

(a) Who processes and packages milk from his or her own farm's production;

(b) Who has route disposition within the marketing area consisting of any portion of such milk;

(c) Who receives no fluid milk products from other dairy farmers or from any source other than a pool plant and whose receipts from pool plants are not in excess of 11,000 pounds per month;

(d) Who disposes of no other source milk as Class I milk except by increasing the nonfat milk solids content of the fluid milk products received from own farm production or pool plants; and

(e) Who furnishes to the Market Administrator for verification, subject to review by the Secretary, evidence that the care and management of all the dairy animals and other resources necessary to produce the entire amount of fluid milk products handled (excluding receipts from pool plants) is the personal enterprise of and at the personal risk of such person and the operation of the processing and distribution business is the personal enterprise of and at the personal risk of the same person.

§ 1138.11 [Reserved]

§ 1138.12 Producer.

(a) Except as provided in paragraph (b) of this section, *producer* means any person who produces milk approved for