

(3) Westmoreland County (except the townships of Cook, Donegal, Fairfield, Ligonier, and St. Clair; and, the boroughs of Bolivar, Donegal, Ligonier, New Florence, and Seward).

(c) In the State of West Virginia, the following counties in their entirety: Barbour, Brooke, Doddridge, Hancock, Harrison, Lewis, Marion, Marshall, Monongalia, Ohio, Preston, Randolph, Taylor, Tucker, Tyler, Upshur, and Wetzel.

[43 FR 38798, Aug. 31, 1978, as amended at 52 FR 242, Jan. 5, 1987]

§ 1036.3 Route disposition.

Route disposition means a delivery (except to a plant), either directly or through any distribution facility (including disposition from a plant store, vendor, or vending machine), of a fluid milk product classified as Class I pursuant to § 1036.40(a)(1).

§ 1036.4 [Reserved]

§ 1036.5 Distributing plant.

Distributing plant means a plant in which fluid milk products approved by a duly constituted health authority for fluid consumption, or filled milk, are processed or packaged and from which there is route disposition in the marketing area during the month.

§ 1036.6 Supply plant.

Supply plant means a plant from which a fluid milk product acceptable to a duly constituted health authority, or filled milk, is transferred or diverted during the month to a pool plant.

§ 1036.7 Pool plant.

Except as provided in paragraph (e) of this section, *pool plant* means:

(a) A distributing pool plant that has:

(1) Route disposition, except filled milk, during the month of not less than 50 percent (40 percent for each month of April through August) of the total receipts of fluid milk products, except filled milk, that are approved by a duly constituted health authority for fluid consumption and that are physically received at such plant or diverted as producer milk pursuant to § 1036.13 to plants other than those qualified as pool plants pursuant to this paragraph; and

(2) Route disposition, except filled milk, in the marketing area during the month of not less than 15 percent of the receipts described in paragraph (a)(1) of this section.

(b) A supply plant from which not less than 40 percent during the months of September, October and November, not less than 35 percent during the months of January and February, and not less than 30 percent in all other months, of the total quantity of milk approved by a duly constituted health authority for fluid consumption that is physically received at such plant from dairy farmers (including milk diverted from the plant as producer milk pursuant to § 1036.13 but excluding milk received as diverted milk) and handlers defined in § 1036.9(c) is transferred or diverted to and physically received in the form of fluid milk products, except filled milk, at pool plants qualified under paragraph (a) of this section or disposed of as route disposition in the marketing area, subject to the following conditions:

(1) At least one tank load of Grade A fluid milk products (not less than 45,000 pounds) must be shipped from the supply plant to a pool distributing plant during one of the months of September, October and November; and

(2) Shipments to be used in determining qualifying percentages shall be milk transferred or diverted and physically received by distributing pool plants, less any transfers or diversions of bulk fluid milk products from such distributing pool plants.

(c) A plant that qualified as a pool plant under paragraph (b) of this section on the basis of its transfers and diversions to pool plants (exclusive of its route disposition in the marketing area) in each of the immediately preceding months of September through February shall be a pool plant for the months of March through August unless the milk received at the plant does not continue to meet the requirements of a duly constituted health authority or a written application is filed by the plant operator with the market administrator on or before the first day of any such month requesting that the plant be designated as a nonpool plant for such month and each subsequent month through August during which it

would not otherwise qualify as a pool plant.

(d) A plant operated by a cooperative association if, during the month, 35 percent or more of the producer milk of members of the association is delivered to a distributing pool plant(s) or to a nonpool plant(s) when a Class II or Class III classification is not requested. Deliveries for qualification purposes may be made directly from the farm or by transfer from such association's plant, subject to the following conditions:

(1) The cooperative requests pool status for such plant;

(2) The 35 percent delivery requirement may be met for the current month or it may be met on the basis of deliveries during the preceding 12-month period ending with the current month;

(3) The plant is approved by a duly constituted health authority to handle milk for fluid consumption; and

(4) The plant does not qualify as a pool plant under paragraph (a), (b), or (c) of this section or under the similar provisions of another Federal order applicable to a distributing plant or supply plant.

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

(1) A producer-handler plant; and

(2) A plant that 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 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 disposed of from such plant in the marketing area regulated pursuant to the other order as route disposition and to plants qualified as fully regulated plants under such other order on the basis of route disposition in its marketing area.

(f) The percentage delivery requirement in paragraphs (b) and (d) of this section may be increased or decreased by up to 10 percentage points by the Director of the Dairy Division if the Director finds that 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 on either the Director's own 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 invite data, views, or arguments in favor of or in opposition to the proposed revision.

[43 FR 38798, Aug. 31, 1978, as amended at 51 FR 30326, Aug. 26, 1986; 54 FR 46363, Nov. 3, 1989; 58 FR 40725, July 30, 1993; 58 FR 43509, Aug. 17, 1993; 59 FR 48558, Sept. 22, 1994]

§ 1036.8 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:

(1) A nonpool plant that is a distributing plant and is not an other order plant or a producer-handler plant; and

(2) An other order plant with respect to its route disposition in the marketing area that is not priced and pooled pursuant to any order issued pursuant to the Act.

(d) *Unregulated supply plant* means:

(1) A nonpool plant that is a supply plant and is not an other order plant or a producer-handler plant; and

(2) An other order plant with respect to fluid milk products which were received at a pool plant from such a plant and which are not priced and pooled pursuant to any order issued pursuant to the Act.

§ 1036.9 Handler.

Handler means:

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