

dairy farm supply of Grade A milk is moved to distributing pool plant(s) as fluid milk products, except filled milk. Any supply plant which has qualified as a pool plant in each of the months of September through February shall be a pool plant in each of the following months of March through August unless written request for nonpool status for any such month(s) is furnished in advance to the market administrator. A plant withdrawn from supply pool plant status may not be reinstated for any subsequent month of March through August unless it fulfills the shipping requirements of this paragraph for such month.

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

- (1) A producer-handler plant;
- (2) A plant meeting the requirements of paragraph (a) of this section which also meets the pooling requirements of another Federal order and from which, the Secretary determines, 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;
- (3) A plant meeting the requirements of paragraph (a) of this section which also meets the pooling requirements of another Federal order on the basis of 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 Federal order; and
- (4) Any distributing plant from which there is less than an average of 300 pounds of route disposition per day, except filled milk, in the marketing area during the month.

EFFECTIVE DATE NOTE: At 62 FR 35948, July 3, 1997, in §1137.7(b), the second sentence is amended by suspending the words “plant which has qualified as a” and “of March through August”, effective Sept. 1, 1997, through Feb. 28, 1999.

#### § 1137.8 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 which is neither an other order plant nor a producer-handler plant from which fluid milk products are moved during the month to a pool plant.

#### § 1137.9 Handler.

*Handler* means:

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

(b) A cooperative association with respect to the milk of its member producers which it causes to be diverted for its account pursuant to §1137.12;

(c) A cooperative association with respect to the milk of its member 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, if the cooperative association notifies the market administrator and the operator of the pool plant to whom the milk is delivered, in writing prior to the first day of the month in which the milk is delivered, that it elects to be the handler for all such milk. Such milk shall be deemed to have been received by such

cooperative association at the location of the pool plant to which 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 §1137.7(c).

**§ 1137.10 Producer-handler.**

(a) *Producer-handler* means any person who operates a dairy farm and a milk processing plant from which there is route disposition in the marketing area and who:

(1) Receives no fluid milk products during the month from dairy farmers;

(2) Receives no fluid milk products during the month from any other source except by transfer from a pool plant; and

(3) Receives no other source milk for reconstitution into fluid milk products.

(b) Such person must provide proof satisfactory to the market administrator that the care and management of all the dairy animals and other resources necessary to produce the volume of fluid milk products (excluding transfers from pool plants) and the operation of the processing and distribution business is the personal enterprise of and at the personal risk of such person.

**§ 1137.11 [Reserved]**

**§ 1137.12 Producer.**

(a) Except as provided in paragraph (b) of this section, *producer* means any person who produces milk eligible for distribution as Grade A milk in compliance with the fluid milk product requirements of a duly constituted health authority, whose milk is received at a pool plant or diverted to a nonpool plant that is not a producer-handler plant within the limits set forth in paragraphs (a)(1) and (2) of this section:

(1) A cooperative association may divert for its account the milk of any member-producer from whom at least three deliveries of milk are received during the month at a distributing pool plant. The total quantity of milk so diverted may not exceed 30 percent in the months of March, April, May, June, July, and December and 20 percent in

other months of its member producer milk received at distributing pool plants during the month. Diversions in excess of such percentages shall not be considered producer milk, and the diverting cooperative shall specify the dairy farmers whose milk is ineligible as producer milk. Two or more cooperative associations may have their allowable diversions computed on the basis of the combined deliveries of milk by their member producers if each association has filed such a request in writing with the market administrator on or before the first day of the month the agreement is effective. This request shall specify the basis for assigning over-diverted milk to the producer members of each cooperative according to a method approved by the market administrator.

(2) A handler in his capacity as the operator of a distributing pool plant may divert for his account the milk of any producer, other than a member of a cooperative association which has diverted milk pursuant to paragraph (a)(1) of this section, from whom at least three deliveries of milk are received during the month at his distributing pool plant. The total quantity of milk so diverted may not exceed 30 percent in the months of March, April, May, June, July, and December and 20 percent in other months of the milk received at such distributing pool plant during the month from producers who are not members of a cooperative association which has diverted milk pursuant to paragraph (a)(1) of this section. Diversions in excess of such percentages shall not be considered producer milk, and the diverting handler shall specify the dairy farmers whose milk is ineligible as producer milk.

(3) For the purposes of the requirements of §1137.7, milk diverted for the account of the operator of a distributing pool plant, except an operator which is also a cooperative association diverting milk in the same month pursuant to paragraph (a)(1) of this section, shall be included in the receipts of the pool plant from which diverted.

(4) For purposes of location adjustments pursuant to §§1137.52 and 1137.75, milk diverted to a nonpool plant shall be considered to have been received at