

plant again qualifies as a pool plant pursuant to paragraph (b) or (d) of this section; and

(2) The automatic pool plant status of a reserve processing plant operated by a federation of cooperative associations qualified pursuant to paragraph (d)(2) of this section shall be forfeited for any month during the March through August period in which the market administrator determines on the basis of the investigation conducted pursuant to paragraph (d)(2) of this section that such plant shall not be a pool plant for the month.

(f) A plant specified in paragraph (f)(1) or (2) of this section shall, except as provided in §§1004.32(e) and 1004.71(c), be exempt from the provisions of this part:

(1) Any plant qualified pursuant to paragraph (a) of this section which would be subject to the classification and pricing provisions of another order issued pursuant to the Act unless the Secretary determines that a greater volume of Class I milk, except filled milk, is disposed of from such plant as route disposition in the Middle Atlantic marketing area than is so disposed of in a marketing area regulated pursuant to such other order; or

(2) Any plant subject to the classification and pricing provisions of another order issued pursuant to the Act, notwithstanding its status under this order pursuant to paragraph (a) or (b) of this section.

(g) The applicable shipping percentage of paragraphs (a) and (b) or (d) of this section may be increased or decreased by the market administrator if the market administrator finds that such revision is necessary to encourage needed shipments or to prevent uneconomic shipments. Before making such a finding, the market administrator shall investigate the need for revision either on the market administrator's own initiative or at the request of interested parties. If the investigation shows that a revision of the shipping percentages might be appropriate, the market administrator shall issue a notice stating that the revision is being considered and invite data, views and arguments. Any request for revision of shipping percentages shall be filed with the market administrator no later

than the 15th day of the month prior to the month for which the requested revision is desired effective.

[40 FR 18753, Apr. 30, 1975, as amended at 44 FR 21621, Apr. 11, 1979; 47 FR 5194, Feb. 4, 1982; 47 FR 51732, Nov. 17, 1982; 48 FR 39034, Aug. 29, 1983; 49 FR 33432, Aug. 23, 1984; 50 FR 16453, Apr. 26, 1985; 60 FR 55310, Oct. 31, 1995]

#### § 1004.8 Nonpool plant.

*Nonpool plant* means a plant other than a pool plant. The following categories of nonpool plants are further defined:

(a) *Other order plant* means a plant that is fully subject to the pricing and payment 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 plant which is not a pool plant, a producer-handler plant, an other order plant, or the plant of a handler pursuant to §1004.9(e), from which fluid milk products in consumer-type packages or dispenser units are disposed of as route disposition in the marketing area during the month.

(d) *Unregulated supply plant* means a plant which is not a pool plant, a producer-handler plant, an other order plant, or the plant of a handler pursuant to §1004.9(e), from which fluid milk products are shipped during the month to a plant qualified under §1004.7.

#### § 1004.9 Handler.

*Handler* means any person described in paragraphs (a) through (f) of this section. Any person in his capacity as the operator of a pool plant or a cooperative association in its capacity as a handler pursuant to paragraph (b) or (c) of this section shall be a "pool handler".

(a) Any person in his capacity as the operator of:

- (1) A pool plant;
- (2) A partially regulated distributing plant;
- (3) An unregulated supply plant; or
- (4) An other order plant.

(b) Any cooperative association or federation of cooperative associations with respect to the milk of any producer which it causes to be diverted in

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accordance with the provisions of § 1004.12 for the account of such cooperative association or federation.

(c) Any cooperative association with respect to the milk of its producer members which is delivered from the farm to the pool plant of another person in a tank truck owned and operated by or under contract to such cooperative association, unless both the cooperative association and the operator of the pool plant notify the market administrator in writing prior to the first day of the month that the plant operator will be responsible for payment for the milk and is purchasing the milk on the basis of farm weights determined by farm bulk tank calibrations and butterfat tests based on samples taken at the farm. Milk for which the cooperative association is qualified pursuant to this paragraph shall be deemed to have been received at the location of the pool plant to which such milk is delivered.

(d) A producer-handler.

(e) A governmental agency in its capacity as the operator of a plant with route disposition in the marketing area.

(f) Any other person who by purchase or direction causes milk of producers to be picked up at the farm and/or moved to a plant.

[40 FR 18753, Apr. 30, 1975, as amended at 49 FR 33432, Aug. 23, 1984]

## § 1004.10 Producer-handler.

*Producer-handler* means any person who operates a dairy farm and a plant with route disposition in the marketing area, and who meets the conditions of paragraphs (a), (b), and (c) of this section:

(a) The sole source of supply of fluid milk products is his own farm production and transfers of such products from pool plants;

(b) The quantity of fluid milk products received from pool plants during the month does not exceed 10,000 pounds;

(c) Such person furnishes proof satisfactory to the market administrator that the maintenance and management of all dairy animals and other resources necessary to produce the entire amount of fluid milk products handled (excluding transfers from pool plants),

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and the operation of the plant are each the personal enterprise of and at the personal risk of such person; and

(d) Sections 1004.40 through 1004.45, 1004.50 through 1004.54, 1004.60 through 1004.62, 1004.70 through 1004.79, 1004.85 and 1004.86, and 1004.90 through 1004.95 shall not apply to a producer-handler.

[40 FR 18753, Apr. 30, 1975, as amended at 56 FR 5329, Feb. 11, 1991]

## § 1004.11 Dairy farmer.

*Dairy farmer* means any person who produces milk which is delivered in bulk to a plant. A dairy farmer shall be a “dairy farmer for other markets” with respect to milk reported pursuant to § 1004.7(d)(4).

[56 FR 5329, Feb. 11, 1991]

## § 1004.12 Producer.

Subject to the conditions of paragraph (e) and the exceptions of paragraph (f) of this section, *producer* means any person described in paragraphs (a) through (d) of this section.

(a) A dairy farmer with respect to milk which is received at a pool plant pursuant to § 1004.7 (a), (b), or (e) directly from the farm.

(b) A dairy farmer with respect to milk which is received at a pool plant pursuant to § 1004.7(d): *Provided*, That such milk is received directly from the farm of one who is a member of the cooperative operating the plant or is received directly from the farm of one who is a member of a cooperative association that is a member of the federation operating the plant, or is received as milk diverted from a pool plant pursuant to § 1004.7(a), (b) or (e).

(c) A dairy farmer with respect to milk received by a cooperative association in its capacity as a handler pursuant to § 1004.9(c).

(d) A dairy farmer with respect to milk which is diverted to a nonpool plant (other than a producer-handler plant) in accordance with the conditions of paragraphs (d)(1) and (d)(2) of this section.

(1) During any month of March through August.

(2) Not more than 18 days' production during any month of September through February unless all of the diversions of member and nonmember