

**§ 1005.14**

**7 CFR Ch. X (1–1–09 Edition)**

(d) Diverted by the operator of a pool plant or a handler described in §1000.9(c) to a nonpool plant, subject to the following conditions:

(1) In any month of July through December, not less than 1 days' production of the producer whose milk is diverted is physically received at a pool plant during the month;

(2) In any month of January through June, not less than 1 days' production of the producer whose milk is diverted is physically received at a pool plant during the month;

(3) The total quantity of milk so diverted during the month by a cooperative association shall not exceed 25 percent during the months of July through November, January, and February, and 35 percent during the months of December and March through June, of the producer milk that the cooperative association caused to be delivered to, and physically received at, pool plants during the month, excluding the total pounds of bulk milk received directly from producers meeting the conditions as described in §1005.82(c)(2)(ii) and (iii), and for which a transportation credit is requested;

(4) The operator of a pool plant that is not a cooperative association may divert any milk that is not under the control of a cooperative association that diverts milk during the month pursuant to paragraph (d) of this section. The total quantity of milk so diverted during the month shall not exceed 25 percent during the months of July through November, January, and February, and 35 percent during the months of December and March through June, of the producer milk physically received at such plant (or such unit of plants in the case of plants that pool as a unit pursuant to §1005.7(d)) during the month, excluding the quantity of producer milk received from handler described in §1000.9(c) and excluding the total pounds of bulk milk received directly from producers meeting the conditions as described in §1005.82 (c)(2)(ii) and (iii), and for which a transportation credit is requested.

(5) Any milk diverted in excess of the limits prescribed in paragraphs (d)(3) and (4) of this section shall not be producer milk. If the diverting handler or

cooperative association fails to designate the dairy farmers' deliveries that will not be producer milk, no milk diverted by the handler or cooperative association shall be producer milk;

(6) Diverted milk shall be priced at the location of the plant to which diverted; and

(7) The delivery day requirements and the diversion percentages in paragraphs (d)(1) through (4) of this section may be increased or decreased by the market administrator if the market administrator finds that such revision is necessary to assure orderly marketing and efficient handling of milk in the marketing area. Before making such a finding, the market administrator shall investigate the need for the revision either on the market administrator's own initiative or at the request of interested persons. If the investigation shows that a revision might be appropriate, the market administrator shall issue a notice stating that the revision is being considered and inviting written data, views, and arguments. Any decision to revise an applicable percentage must be issued in writing at least one day before the effective date.

(e) Producer milk shall not include milk of a producer that is subject to inclusion and participation in a marketwide equalization pool under a milk classification and pricing program imposed under the authority of a State government maintaining marketwide pooling of returns.

[64 FR 47960, Sept. 1, 1999, as amended at 70 FR 59223, Oct. 12, 2005; 71 FR 62378; Oct. 25, 2006; 73 FR 14156, Mar. 17, 2008; 73 FR 26315, May 9, 2008]

**§ 1005.14 Other source milk.**

See §1000.14.

**§ 1005.15 Fluid milk product.**

See §1000.15.

**§ 1005.16 Fluid cream product.**

See §1000.16.

**§ 1005.17 [Reserved]**

**§ 1005.18 Cooperative association.**

See §1000.18.