

a duly constituted regulatory agency for fluid consumption as Grade A milk and whose milk is:

(1) Received at a pool plant directly from the producer or diverted by the plant operator in accordance with §1033.13; or

(2) Received by a handler described in §1033.9(c).

(b) Producer shall not include:

(1) A producer-handler as defined in any Federal order;

(2) A dairy farmer whose milk is received at an exempt plant, excluding producer milk diverted to the exempt plant pursuant to §1033.13(d);

(3) A dairy farmer whose milk is received by diversion at a pool plant from a handler regulated under another Federal order if the other Federal order designates the dairy farmer as a producer under that order and that milk is allocated by request to a utilization other than Class I; and

(4) A dairy farmer whose milk is reported as diverted to a plant fully regulated under another Federal order with respect to that portion of the milk so diverted that is assigned to Class I under the provisions of such other order.

§ 1033.13 Producer milk.

Producer milk means the skim milk (or the skim equivalent of components of skim milk), including nonfat components, and butterfat in milk of a producer that is:

(a) Received by the operator of a pool plant directly from a producer or a handler described in §1000.9(c). All milk received pursuant to this paragraph shall be priced at the location of the plant where it is first physically received;

(b) Received by a handler described in §1000.9(c) in excess of the quantity delivered to pool plants;

(c) Diverted by a pool plant operator to another pool plant. Milk so diverted shall be priced at the location of the plant to which diverted; or

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

(1) Milk of a dairy farmer shall not be eligible for diversion until milk of such

dairy farmer has been physically received as producer milk at a pool plant and the dairy farmer has continuously retained producer status since that time. If a dairy farmer loses producer status under the order in this part (except as a result of a temporary loss of Grade A approval), the dairy farmer's milk shall not be eligible for diversion until milk of the dairy farmer has been physically received as producer milk at a pool plant;

(2) The equivalent of at least two days' milk production is caused by the handler to be physically received at a pool plant in each of the months of August through November;

(3) The equivalent of at least two days' milk production is caused by the handler to be physically received at a pool plant in each of the months of December through July if the requirement of paragraph (d)(2) of this section (§1033.13) in each of the prior months of August through November are not met, except in the case of a dairy farmer who marketed no Grade A milk during each of the prior months of August through November.

(4) Of the total quantity of producer milk received during the month (including diversions but excluding the quantity of producer milk received from a handler described in §1000.9(c) or which is diverted to another pool plant), the handler diverted to nonpool plants not more than 50 percent in each of the months of August through February and 60 percent in each of the months of March through July.

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

(6) Any milk diverted in excess of the limits set forth in paragraph (d)(3) of this section shall not be producer milk. The diverting handler shall designate the dairy farmer deliveries that shall not be producer milk. If the handler fails to designate the dairy farmer deliveries which are ineligible, producer milk status shall be forfeited with respect to all milk diverted to nonpool plants by such handler; and

(7) The delivery day requirement in paragraphs (d)(2) and (d)(3) of this section and the diversion percentages in paragraph (d)(4) of this section may be increased or decreased by the market

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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 request is made in writing at least 15 days prior to the month for which the requested revision is desired effective. 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 plan imposed under the authority of another government entity.

(f) Producer milk of a handler shall not exceed the limits as established in §1033.13(f)(1) through §1033.13(f)(3).

(1) Producer milk for the months of April through February may not exceed 115 percent of the producer milk receipts of the prior month. Producer milk for March may not exceed 120 percent of producer receipts of the prior month; plus

(2) Milk shipped to and physically received at pool distributing plants and allocated to Class I use in excess of the volume allocated to Class I in the prior month; plus

(3) If a producer did not have any milk delivered to any plant as other than producer milk as defined under the order in this part or any other Federal milk order for the preceding three months; and the producer had milk qualified as producer milk on any other Federal order in the previous month, add the lesser of the following:

(i) Any positive difference of the volume of milk qualified as producer milk on any other Federal order in the previous month, less the volume of milk qualified as producer milk on any other Federal order in the current month, or

(ii) Any positive difference of the volume of milk qualified as producer milk under the order in this part in the current month, less the volume of milk qualified as producer milk under the order in this part in the previous month.

(4) Milk received at pool plants in excess of these limits shall be classified pursuant to §1000.44(a)(3)(v) and §1000.44(b). Milk diverted to nonpool plants reported in excess of this limit shall not be producer milk. The handler must designate, by producer pickup, which milk shall not be producer milk. If the handler fails to provide this information the provisions of §1033.13(d)(6) shall apply.

(5) The market administrator may waive these limitations:

(i) For a new handler on the order, subject to the provisions of §1033.13(f)(6), or

(ii) For an existing handler with significantly changed milk supply conditions due to unusual circumstances;

(6) Milk may not be considered producer milk if the market administrator determines that handlers altered the reporting of such milk for the purpose of evading the provisions of this paragraph.

[64 FR 47991, Sept. 1, 1999, as amended at 67 FR 48744, July 26, 2002; 69 FR 34555, June 22, 2004; 70 FR 56112, Sept. 26, 2005; 71 FR 63219, Oct. 30, 2006]

§ 1033.14 Other source milk.

See §1000.14.

§ 1033.15 Fluid milk products.

See §1000.15.

§ 1033.16 Fluid cream product.

See §1000.16.

§ 1033.17 [Reserved]

§ 1033.18 Cooperative association.

See §1000.18.

§ 1033.19 Commercial food processing establishment.

See §1000.19.