

Agricultural Marketing Service, USDA

§ 1124.7

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AUTHORITY: 7 U.S.C. 601-674, and 7253.

SOURCE: 64 FR 47998, Sept. 1, 1999, unless otherwise noted.

Subpart—Order Regulating Handling

GENERAL PROVISIONS

§ 1124.1 General provisions.

The terms, definitions, and provisions in part 1000 of this chapter apply to this part 1124. In this part 1124, all references to sections in part 1000 refer to part 1000 of this chapter.

DEFINITIONS

§ 1124.2 Pacific Northwest marketing area.

The marketing area means all territory within the bounds of the following states and political subdivisions, including all piers, docks, and wharves connected therewith and all craft moored thereat, and all territory occupied by government (municipal, State, or Federal) reservations, installations, institutions, or other similar establishments if any part thereof is within any of the listed states or political subdivisions:

IDAHO COUNTIES

Benewah, Bonner, Boundary, Kootenai, Latah, and Shoshone.

OREGON COUNTIES

Benton, Clackamas, Clatsop, Columbia, Coos, Crook, Curry, Deschutes, Douglas, Gilliam, Hood River, Jackson, Jefferson, Josephine, Klamath, Lake, Lane, Lincoln, Linn, Marion, Morrow, Multnomah, Polk, Sherman, Tillamook, Umatilla, Wasco, Washington, Wheeler, and Yamhill.

WASHINGTON

All of the State of Washington.

§ 1124.3 Route disposition.

See § 1000.3.

§ 1124.4 Plant.

See § 1000.4.

§ 1124.5 Distributing plant.

See § 1000.5.

§ 1124.6 Supply plant.

See § 1000.6.

§ 1124.7 Pool plant.

Pool plant means a plant, unit of plants, or a system of plants as specified in paragraphs (a) through (f) of this section, but excluding a plant specified in paragraph (h) of this section. The pooling standards described in paragraph (c) of this section are subject to modification pursuant to paragraph (g) of this section:

(a) A distributing plant, other than a plant qualified as a pool plant pursuant to paragraph (b) of this section or § _____7(b) of any other Federal milk order, from which during the month 25 percent or more of the total quantity of fluid milk products physically received at the plant (excluding concentrated milk received from another plant by agreement for other than Class I use) are disposed of as route disposition or are transferred in the form of packaged fluid milk products to other distributing plants. At least 25 percent of such route disposition and transfers must be to outlets in the marketing area.

(b) Any distributing plant located in the marketing area which during the month processed at least 25 percent of

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the total quantity of fluid milk products physically received at the plant (excluding concentrated milk received from another plant by agreement for other than Class I use) into ultra-pasteurized or aseptically-processed fluid milk products.

(c) A supply plant from which during any month not less than 20 percent of the total quantity of milk that is physically received at such plant from dairy farmers eligible to be producers pursuant to § 1124.12 (excluding milk received at such plant as diverted milk from another plant, which milk is classified other than Class I under the order in this part and is subject to the pricing and pooling provisions of this or another order issued pursuant to the Act) or diverted as producer milk to another plant pursuant to § 1124.13, is shipped in the form of a fluid milk product (excluding concentrated milk transferred by agreement for other than Class I use) to a pool distributing plant or is a route disposition in the marketing area of fluid milk products processed and packaged at such plant;

(1) A supply plant that has qualified as a pool plant during each of the immediately preceding months of September through February shall continue to so qualify in each of the following months of March through August, unless the plant operator files a written request with the market administrator that such plant not be a pool plant, such nonpool status to be effective the first month following such request and thereafter until the plant qualifies as a pool plant on the basis of milk shipments;

(2) No plant may qualify as a pool plant due to a reduction in the shipping percentage pursuant to paragraph (g) of this section unless it has been a pool supply plant during each of the immediately preceding 3 months.

(d) A manufacturing plant located within the marketing area and operated by a cooperative association, or its wholly owned subsidiary, if, during the month, or the immediately preceding 12-month period ending with the current month, 20 percent or more of the producer milk of members of the association (and any producer milk of nonmembers and members of another cooperative association which may be

marketed by the cooperative association) is physically received in the form of bulk fluid milk products (excluding concentrated milk transferred to a distributing plant for an agreed-upon use other than Class I) at plants specified in paragraph (a) or (b) of this section either directly from farms or by transfer from supply plants operated by the cooperative association, or its wholly owned subsidiary, and from plants of the cooperative association, or its wholly owned subsidiary, for which pool plant status has been requested under this paragraph subject to the following conditions:

(1) The plant does not qualify as a pool plant under paragraph (a), (b), or (c) of this section or under comparable provisions of another Federal order; and

(2) The plant is approved by a duly constituted regulatory agency for the handling of milk approved for fluid consumption in the marketing area.

(3) A request is filed in writing with the market administrator before the first day of the month for which it is to be effective. The request will remain in effect until a cancellation request is filed in writing with the market administrator before the first day of the month for which the cancellation is to be effective.

(e) [Reserved]

(f) A system of two or more plants identified in § 1124.7(d) operated by one or more cooperative handlers may qualify for pooling by meeting the above shipping requirements subject to the following additional requirements:

(1) The cooperative handler(s) establishing the system submits a written request to the market administrator on or before the first day of the month for which the system is to be effective requesting that such plants qualify as a system. Such request will contain a list of the plants participating in the system in the order, beginning with the last plant, in which the plants will be dropped from the system if the system fails to qualify. Each plant that qualifies as a pool plant within a system shall continue each month as a plant in the system until the handler(s) establishing the system submits a written request before the first day of the month to the market administrator

that the plant be deleted from the system or that the system be discontinued. Any plant that has been so deleted from a system, or that has failed to qualify in any month, will not be part of any system. In the event of an ownership change or the business failure of a handler that is a participant in the system, the system may be reorganized to reflect such a change if a written request to file a new marketing agreement is submitted to the market administrator; and

(2) If a system fails to qualify under the requirement of this paragraph, the handler responsible for qualifying the system shall notify the market administrator of which plant or plants will be deleted from the system so that the remaining plants may be pooled as a system. If the handler fails to do so, the market administrator shall exclude one or more plants, beginning at the bottom of the list of plants in the system and continue up the list as necessary until the deliveries are sufficient to qualify the remaining plants in the system.

(g) The applicable shipping percentage of paragraphs (c) and (d) of this section may be increased or decreased by the market administrator if the market administrator finds that such adjustment is necessary to encourage needed shipments or to prevent uneconomic shipments. Before making such a finding, the market administrator shall investigate the need for adjustment either on the market administrator's own initiative or at the request of interested parties if the request is made in writing at least 15 days prior to the month for which the requested revision is desired to be effective. If the investigation shows that an adjustment of the shipping percentages might be appropriate, the market administrator shall issue a notice stating that an adjustment is being considered and invite data, views and arguments. Any decision to revise an applicable shipping percentage must be issued in writing at least one day before the effective date.

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

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

(2) An exempt plant as defined in §1000.8(e);

(3) A plant located within the marketing area and qualified pursuant to paragraph (a) of this section which meets the pooling requirements of another Federal order, and from which more than 50 percent of its route disposition has been in the other Federal order marketing area for 3 consecutive months;

(4) A plant located outside any Federal order marketing area and qualified pursuant to paragraph (a) of this section that meets the pooling requirements of another Federal order and has had greater route disposition in such other Federal order's marketing area for 3 consecutive months;

(5) A plant located in another Federal order marketing area and qualified pursuant to paragraph (a) of this section that meets the pooling requirements of such other Federal order and does not have a majority of its route distribution in this marketing area for 3 consecutive months or if the plant is required to be regulated under such other Federal order without regard to its route disposition in any other Federal order marketing area; and

(6) A plant qualified pursuant to paragraph (c) of this section which also meets the pooling requirements of another Federal order and from which greater qualifying shipments are made to plants regulated under the other Federal order than are made to plants regulated under the order in this part, or the plant has automatic pooling status under the other Federal order.

[64 FR 47998, Sept. 1, 1999, as amended at 67 FR 69669, Nov. 19, 2002]

§ 1124.8 Nonpool plant.

See §1000.8.

§ 1124.9 Handler.

See §1000.9.

§ 1124.10 Producer-handler.

Producer-handler means a person who operates a dairy farm and a distributing plant from which there is route disposition within the marketing area during the month and who the market administrator has designated a producer-handler after determining that