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July 13, 2007

Ms. Dana Coale, Deputy Administrator
Dairy Programs, AMS, USDA
USDA-AMS-Dairy Programs
1400 Independence Avenue, SW
Washington, D.C. 20250-0225

Dear Deputy Administrator:

Northwest Dairy Association (NDA) and Dairy Farmers of America, Inc. (DFA) ("proponents") request that the Secretary of Agriculture convene a public hearing upon the enclosed proposal to expand the Pacific Northwest Federal Milk Marketing Order 1124 ("Order 124") marketing area to include all of the counties in the states of Washington, Oregon, Idaho and Utah and Lincoln and Uinta Counties in Wyoming (the "Expanded Order"). This request incorporates most provisions of the existing Order 124, addresses the necessary performance standards to effectuate the Expanded Order for producers, cooperatives and handlers, adds order provisions intended to deter opportunistic depooling of milk supplies (an issue not addressed in existing Order 124), and proposes some modification of certain reporting and payment dates under Order 124.

Overview of marketing conditions in the region

Using estimates of the potential size of an expanded order based upon 2006 NASS milk production data for the four states, and adjusting that data for the conditions which prevailed in the first quarter of 2004 when the former Western Order was in existence, we believe that the Expanded Order 124 would pool approximately 1.2 billion pounds of milk monthly. Proponents represent nearly 900 million pounds of that milk or 72% of the milk expected to be affected by the regulation.

We expect the hearing record to show that there is handler competition in the expanded marketing area as proposed. A simple review of the current Order 124 handler list indicates overlap. Recent history has indicated a significant issue with disorderly handler competition

arising from the actions of one unregulated handler in the marketplace. There is an overlap in milk procurement in the Idaho milkshed and a need for common marketing provisions in the milkshed that serves both the currently regulated PNW markets and the unregulated Idaho and Utah markets. The Order 124 market currently suffers from the absence of pooling provisions dealing with depooling. This issue has been recognized in other Federal Order markets, and producers wish to have similar regulations adopted in the Expanded Order. The proximity of both regulated and unregulated milk supplies is becoming disruptive in the current Pacific Northwest (“PNW”) markets, and the proponents feel such disruption will grow if not corrected by the expansion of that Order.

Structural changes in the dairy markets in the four-state area contribute to the need to expand Order 124 as proposed. First, milk production has been increasing its movement to the eastern portion of the existing PNW market. Major contributing factors include pressures to increase farm size to gain economies of scale, the increasing property values in Western Washington and Oregon and the desire of the growing urban areas west of the Cascade Mountains showing growing resistance to having dairies as neighbors. Increasing herd sizes simply cannot happen in most counties in Western Washington and Oregon due to land costs, environmental pressures, or both. The amount of land available for agriculture is declining and the suburbs are moving ever closer to traditional farm country. These factors combine to make it more attractive to sell farms in these areas and either retire or create larger farms in the eastern portions of these states or in other states. Farm size and structure is more similar between operations in southeast Washington, Oregon and Idaho where “western style” dairies are predominant. In Utah, newer farms also follow similar organization with start-up size in the over 1,000 head range.

The experience in the PNW is that the concentration of milk production is moving closer to Idaho and Utah. This means that the newer Order 124 plants have moved closer to Idaho and Utah. Any past difficulties of moving milk from Idaho into Order 124 have all but disappeared. These natural forces will not abate.

Marketing Area

Proponents propose that Order 124 be expanded to include all counties in Washington, Oregon, Idaho and Utah and the Wyoming counties of Uinta and Lincoln. The former Western Order

regulated the Wyoming counties and the production in those counties impacts sales and interacts with the remainder of the market of the proposed Expanded Order. The farthest distance from major consumption points would be from Seattle to Salt Lake City – 846 miles. This is less than the 1,118 miles from Albuquerque to Beaumont Texas – both cities in Order 126; also less than, but comparable to, the 858 miles between St Louis and Denver, both major markets within the Central Order. The proponents will demonstrate the similarities in the proposed marketing areas indicating they should be commonly regulated.

Handler Competition

Data from the existing Market Administrator records indicate there are four distributing plants in the Expanded Order marketing area, which are partially regulated by the current PNW Order 124. The distributing plants which compete with existing PNW plants are Darigold, Inc., Boise ID; Gossner Foods, Logan, Utah; The Kroger Company, Layton, Utah; and Meadow Gold Dairies, Inc., Boise, Idaho. Data from the former Western Order show that for the final month of regulation, distributing plants owned by Darigold (formerly WestFarm Foods) in Portland, Oregon and Seattle, Washington and the Wilcox Dairy Farms, LLC plant in Cheney, Washington had distribution in what would now be the Idaho and Utah areas of the proposed Expanded Order. It is reasonable to expect that all these plants engage in competition with some subsets of one another.

NDA staff surveyed five major chain stores in Boise, ID, and found significant numbers of products from Oregon and Washington. 29% of gallon and half-gallon products, 41% of the cultured and flavored milk products, 49% of the fluid cream products and 28% of the cultured products presented for sale were packaged in the PNW, both in Oregon and Washington plants. These sales reflect movement of milk products from the current PNW market into the Boise Market from two additional PNW processors.

DFA staff surveyed grocery stores in Burley, Idaho Falls, Paul, Preston, and Rupert Idaho. We found fluid milk products from Utah processors in four of the five markets and from Oregon handlers in one of the markets. In the northeastern Utah markets we found product from Montana processors.

Unregulated Packaged Milk Supply Issues

Expanding the current marketing area as proposed will fully regulate all handlers located in the actual marketing area. In addition, the Expanded Order needs to provide for appropriate provisions for regulation, full or partial, of handlers outside the marketing area, which have substantial distribution into the marketing area in competition with fully regulated handlers. In this region, substantial competition of this nature has come from a plant in Boseman, Montana, which has asserted a right to market into federally regulated areas without making any equalization payments to the producer-settlement fund. This has resulted in litigation that, to the best of our knowledge, is ongoing. While the position of the Market Administrator to require equalization payments from this handler has been legally upheld to date, we believe that orderly marketing conditions in the region will be best maintained if the standard for full regulation under the Expanded Order is set at 15% of a handler's route sales. A handler with 15% of its fluid milk sales distribution in the marketing area is a substantial participant in the market, which should be subject to the same terms of full regulation as all other handlers. Furthermore, in this particular market it has been demonstrated that a more restrictive standard than in present in other Orders is warranted.

Proponents seek the regulatory benefits from minimum uniform handler prices and common terms of trade. Expansion of the PNW Order 124 into the proposed marketing areas will greatly assist in providing regulatory minimum solutions to this issue and our proposed language will provide for a better standard of measure in this marketing area given the recent history of disorderly marketing.

Milk Supply Issues

There are many issues related to common milk supplies that support the proposed Order 124 expansion. The most obvious reason is that both NDA and DFA have significant volumes of milk that is marketed in the existing PNW Order 124 markets and in the unregulated markets of Idaho and in Utah. An additional key factor in the desire to expand the PNW Order 124 is to provide a marketing framework to accommodate, in an orderly fashion, the explosive growth in milk production in Idaho. Annual milk production in Washington has increased 3.5% between 1996 and 2006; 12.8% in Utah; 39.4% in Oregon and 130.1% in Idaho. The growth is significant in Idaho. Proponents, who represent approximately 40% of the Idaho/Utah milk supply and approximately 30% of the Idaho milk supply feel an expanded Order will best help

the industry manage the marketing of milk in the growing marketing area. The supply in Idaho is a current market reserve for both the PNW market and the Utah market and will likely become a greater reserve source in the future. Milk moves into and out of Idaho to serve both markets. Both as supplemental milk for pool distributing plants and to process reserve supplies when balancing capacity in the local Washington / Oregon and Utah markets are filled. Milk occasionally moves direct to the necessary outlet but more likely it is domino-ed either into the fluid use market or back into the processing plant.

Because of the interrelation of milk supplies and handler sales, the proponents feel that it is in their long-term economic interest to have common milk supplies be subject to common Order marketing provisions. Having a federal order marketing area consisting of the entire four-state area, as proposed, would put all milk into the same pool, meeting the same performance standards.

Issues With Depooling and Other Performance Provisions

The need to regulate depooling is a well-recognized issue in the Order system. Order 1 has specific language to ameliorate the effects of depooling. Orders 30, 32 and 33 have all had hearings to address the issue – and producers in each order supported provisions to moderate the practice. It is likely that if, in first quarter of 2004, the former Western Order would have contained provisions that limited depooling, producer sentiment would not have been so negative towards the Order system and the desire to eliminate the Order would not have prevailed.

The negative impact of depooling on producer incomes can only be addressed through amended Order provisions. Accordingly, there should be an Expanded Order to remedy the problem in a consistent manner across the entire area.

The proponents are requesting provisions in the Expanded Order to regulate depooling patterned after the Midwestern Orders' model – that is: base pooling in the current month on pounds pooled in prior months. Because of the current and expected high percentage of Class III and IV utilization on the envisioned expanded order, the proponents are seeking a very tight and strict standard – as much to police themselves as to impact others. We will propose that any handler only be able to pool 105 percent of the prior month's deliveries – a much tighter level than those in the Midwestern Orders. We will propose that this limitation be calculated on

a daily average basis. This will allow for production growth while accommodating the varying number of days in each month.

The other components of our performance provision proposals include requiring producers to “touch base” two days per month. If the requirement is met for the months of September through February for a producer, that producer earns the right to be pooled through the following months of March through August without further “touch base” deliveries. We estimate that the average size producer in the market will produce approximately 26,500 pounds of milk per day. Consequently, a two-day touch base requirement will represent about a full tanker load of milk. In our opinion this is a reasonable standard for this market, given the expected utilization and the configuration of milk supplies. Some of the largest producers in the country are located in this market. For these producers the two-day standard will represent a sizable commitment to serve the market. Furthermore, for many regions of the market where the producer base has grown explicitly to serve the Class III and IV manufacturing industry, a two-day touch base limit will force a large farm to examine the economics of delivering to a plant different from its regular market in order to be pooled.

Proponents request that “net shipments” language limit allowable diversions to insure that any producer qualification delivery involves actual performance for the market. This provision was in the former Western Order Final Decision and has been adopted in the Mideast Order in recent performance provision hearings. Proponents feel a net shipment provision is an excellent addition to the Expanded Order because the significant volume of total production relative to fluid use needs would tempt suppliers to deliver milk to processors for qualification and then pump it back on the delivery truck for a return to the manufacturing plant – showing no real intent to serve the fluid market. This activity was documented in the former Western Order and the pressure to repeat that performance will be present here also.

Finally, we will propose to eliminate the “Cooperative reserve supply unit” provisions, (currently in § 1124.11) in their entirety. We cannot support provisions that grant pool status to an entity that is not required to perform at all. Under current conditions the provision is neither used nor needed by any cooperative participating in Order 124. Also, we are concerned that in an Expanded Order this provision could be used by a current or future market participant to share in the pool returns, but not perform for the market.

Problems from the Lack of Regulation

The coexistence of regulated and unregulated milk supplies in close proximity results in disorderly marketing. There are wide variations in producer prices in the expanded marketing area. As a matter of regular business, the proponents track historical prices that are paid by firms procuring milk in Southern Idaho. For March 2007 for milk of standard test, the range in prices between eight different payers spread across the market was \$2.25 per hundredweight. The highest price in the competitive area was \$15.09 and the lowest \$12.84. This spread in prices for March is not atypical. It is due, in part, to a lack of transparency in producer and handler pricing provisions; to the widely unequal sharing of classified utilizations; to the effects of depooling and to the unrelenting pressure of milk from unregulated markets to seek homes in regulated markets. While an Expanded Order will not totally eliminate the spread in prices nor change all of the underlying factors of dairy economics in the region, it will bring more transparency to producer prices in the area, level the pay-price playing field substantially, and ultimately benefit producers.

The current pay price divergence in this milkshed represents disorderly marketing. One of the results of this situation is the increasing interest in milk from the unregulated counties in Idaho to seek pool status in the PNW Order. The motivation behind the increased interest is simple. The Idaho market, with its absence of organized pricing mechanisms, has difficulty in maintaining an orderly market. First, there is a growing milk supply and static plant capacity. Second, there is no price reference point to provide a floor price for milk. Finally, the price spread between the cheese yield price formulas and the federal order Class III price continues to widen. The situation has enabled existing handlers to offer widely varying prices to producers and an overwhelming lack of transparency in pricing provisions. The result is an incentive for producers to find outside markets – in whatever fashion possible.

Data from the existing PNW market for August 2006 versus August 2005, the last month for which fully comparable data is available, indicate that milk pooled on the PNW had increased 10%. Milk from producers inside the marketing area increased by 1% while milk from producers located outside the marketing area grew by 141%. Producers seeking price equalization drive this situation. The institution of an expanded order will not change the underlying economic realities of manufacturing dairy products, but the existence of Order minimum prices and a clear understanding of how those prices are determined will be a benefit to producers.

Future Considerations

The milk supply situation in the region will continue to evolve towards fewer larger farms located further from population centers. Processing plants will also grow larger in size and will seek the same economies of scale that drive producers. Proponents believe that Orders must be forward-looking if they are to serve producer interests.

The benefits of, and reasons for, Order regulation continue in today's marketplace. The proponents would like these benefits to be at work in the northwestern United States. The proponents, who represent the majority of the milk production in the area, who supply the class I needs of the area, and who balance the markets in question wholly support this proposal in its entirety.

The language to effectuate our proposals is attached to this request. We will be pleased to explain them to the Dairy Programs staff at your convenience.

Sincerely,

A handwritten signature in black ink, appearing to read "Elvin Hollory", written over a horizontal line.

Elvin Hollory
Director of Fluid Marketing / Economic Analysis
Dairy Farmers of America

A handwritten signature in black ink, appearing to read "Mike Brown", written over a horizontal line.

Mike Brown
Director of Policy and Planning
Northwest Dairy Association

CC: James Dougherty
Marvin Beshore, Esq.

§ 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:

Washington

All of the State of Washington.

Idaho Counties

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

All of the State of Idaho.

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.~~

All of the State of Oregon.

Utah Counties

All of the State of Utah.

Wyoming Counties

Lincoln, Unita.

§ 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 section 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~~ 15 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 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 this order 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.

(3) Shipments used in determining qualifying percentages shall be milk transferred to and physically received by distributing pool plants, less any transfers of bulk fluid milk products including concentrated milk products from such distributing pool plants.

(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), (b), or (e) 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), (c), or (e) 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) Shipments used in determining qualifying percentages shall be milk transferred to or delivered pursuant to 9(c) and physically received by distributing pool plants, less any transfers of bulk fluid milk products including concentrated milk products from such distributing pool plants.

~~(3)~~ (4) 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) Any distributing plant, located within the marketing area as described on May 1, 2006, in § 1124.2;

(1) From which there is route disposition and/or transfers of packaged fluid milk products in any non-federally regulated marketing area(s) located within one or more States that require handlers to pay minimum prices for raw milk provided that 25 percent or more of the total quantity of fluid milk products physically received at such plant (excluding concentrated milk received from another plant by agreement for other than Class I use) is disposed of as route disposition and/or is transferred in the form of packaged fluid milk products to other plants. At least ~~25~~ 15 percent of such route disposition and/or transfers, in aggregate, are in any non-federally regulated marketing area(s) located within one or more States that require handlers to pay minimum prices for raw milk. Subject to the following exclusions:

(i) The plant is described in § 1124.7(a) or (b);

(ii) The plant is subject to the pricing provisions of a State-operated milk pricing plan which provides for the payment of minimum class prices for raw milk;

(iii) The plant is described in § 1000.8(a) or (e); or

(iv) A producer-handler described in § 1124.10 with less than three million pounds during the month of route dispositions and/or transfers of packaged fluid milk products to other plants.

(2) [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 the 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 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 this order, or the plant has automatic pooling status under the other Federal order.

~~§ 1124.11 Cooperative reserve supply unit.~~

~~Cooperative reserve supply unit means any cooperative association or its agent that is a handler pursuant to § 1000.9(c) that does not own or operate a plant, if such cooperative has been qualified to receive payments pursuant to § 1124.73 and has been a handler of producer milk under this or its predecessor order during each of the 12 previous months, and if a majority of the cooperative's member producers are located within 125 miles of a plant described in § 1124.7(a). A cooperative reserve supply unit shall be subject to the following conditions:~~

~~(a) The cooperative shall file a request with the market administrator for cooperative reserve supply unit status at least 15 days prior to the first day of the month in which such status is desired to be effective. Once qualified as a cooperative reserve supply unit pursuant to this paragraph, such status shall continue to be effective unless the cooperative requests termination prior to the first day of the month that change of status is requested, or the cooperative fails to meet all of the conditions of this section.~~

~~(b) The cooperative reserve supply unit supplies fluid milk products to pool distributing plants located within 125 miles of a majority of the cooperative's member producers in compliance with any announcement by the market administrator requesting a minimum level of shipments as further provided below:~~

~~(1) The market administrator may require such supplies of bulk fluid milk from cooperative reserve supply units whenever the market administrator finds that milk supplies for Class I use are needed for plants defined in § 1124.7(a) or (b). Before making such a finding, the market administrator shall investigate the need for such shipments 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 market administrator's investigation shows that such shipments might be appropriate, the market administrator shall issue a notice stating that a~~

~~shipping announcement is being considered and inviting data, views and arguments with respect to the proposed shipping announcement. Any decision on the required shipment of bulk fluid milk from cooperative reserve supply units must be made in writing at least one day before the effective date.~~

~~(2) Failure of a cooperative reserve supply unit to comply with any announced shipping requirements, including making any significant change in the unit's marketing operation that the market administrator determines has the impact of evading or forcing such an announcement, shall result in immediate loss of cooperative reserve supply unit status until such time as the unit has been a handler pursuant to § 1000.9(e) for at least 12 consecutive months.~~

§ 1124.13 Producer milk.

Except as provided for in paragraph (f) of this section, 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 cooperative reserve supply unit described in § 1124.11. All milk received pursuant to this paragraph shall be priced at the location of the plant where it is first physically received and shall not be subject to the conditions specified in paragraph (c) of this section;~~

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

~~(d)~~ (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

~~(e)~~ *(d)* Diverted by the operator of a pool plant or a cooperative association described in § 1000.9(c), ~~excluding a cooperative reserve supply unit described in § 1124.11,~~ to a nonpool plant, subject to the following conditions:

(1) Milk of a dairy farmer shall not be eligible for diversion unless at least *2 days'* production of such dairy farmer's production is physically received at a pool plant during the month, *except a* producer that has qualified during each of the immediately preceding months of September through February *each year* shall continue to so qualify in each of the following months of March through August. *In the case of a producer whose milk has not been received at a pool plant for at least 2 days' production during each of the preceding months of September through February such producer shall be required to do so in any month of March through August to qualify his/her milk for diversion during such month. This delivery requirement for diversion purposes shall continue until such producer's milk has been received at a pool plant for 6 consecutive months beginning during or after the September through February period.*

(2) Of the 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)) the handler diverts to nonpool plants not more than 80 percent. *Receipts used in determining qualifying diversion percentages in this section shall be milk transferred to, or delivered from farms of producers pursuant to Section 1000.9(c) and physically received by pool distributing plants, less any transfers of bulk fluid milk products including concentrated milk products from such pool distributing plant.*

(3) Two or more handlers described in § 1000.9(c) may have their allowable diversions computed on the basis of their combined deliveries of producer milk which they caused to be delivered to pool plants or diverted during the month if each has filed a request in writing with the market administrator before the first day of the month the agreement is to be effective. The request shall specify the basis for assigning overdiverted milk to the producer deliveries of each according to a method approved by the market administrator.

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

(5) Any milk diverted in excess of the limits prescribed in paragraph (e)(2) of this section shall not be producer milk. If the diverting handler or cooperative association fails to designate the dairy farmers' deliveries that are not to be producer milk, no milk diverted by the handler or cooperative association during the month to a nonpool plant shall be producer milk. ~~In the event some of the milk of any producer is determined not to be producer milk pursuant to this paragraph, other milk delivered by such producer as producer milk during the month will not be subject to § 1124.12(b)(5); and~~

(6) The delivery day requirement in paragraph (e)(1) of this section and the diversion percentage in paragraph (e)(2) of this section may be increased or decreased by the market administrator if the market administrator finds that such revision is necessary to assure the orderly marketing and efficient handling of milk in the marketing area. Before making such 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 at least 15 days prior to the month for which the requested revision is desired to be 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 the delivery day requirement or the diversion percentage must be issued in writing at least one day before the effective date.

(e) The quantity of milk reported by a handler pursuant to either § 1124.30(a)(1) and/or § 1124.30(c)(1) shall not exceed the quantity computed by multiplying the average daily delivery of the producer milk receipts pooled by the handler during the prior month by the calendar days in the current month, this product then multiplied by 105 percent. Milk diverted to nonpool plants reported in excess of this limit shall be removed from the pool. Milk in excess of this limit received at pool plants, other than pool distributing plants, shall be classified pursuant to § 1000.44(a)(3)(v) and § 1000.44(b). The handler must designate, by producer, which milk is to be removed from the pool. If the handler fails to provide this information, the market administrator will make the determination. The following provisions apply:

(1) Milk shipped to and physically received at pool distributing plants in excess of the previous month's pooled volume shall not be subject to the maximum volume limitation;

(2) Producer milk qualified pursuant to § __.13 of any other Federal Order and continuously pooled in any Federal Order for the previous six months shall not be included in the computation of the maximum volume limitation;

(3) The market administrator may waive the maximum volume limitation:

(i) For a new handler on the order, subject to the provisions of § 1124.13(e)(4), or

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

(4) A bloc of milk may be considered ineligible for pooling if the market administrator determines that handlers altered the reporting of such milk for the purpose of evading the provisions of paragraph (f).

(f) 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.

HANDLER REPORTS

§ 1124.30 Reports of receipts and utilization.

Each handler shall report monthly so that the market administrator's office receives the report on or before the 9th 8th day after the end of the month, in the detail and on the prescribed forms, as follows:

§ 1124.31 Payroll reports.

(a) On or before the 20th 19th day after the end of each month, each handler that operates a pool plant pursuant to § 1124.7 and each handler described in § 1000.9(c) shall report to the market administrator its producer payroll for the month, in the detail prescribed by the market administrator, showing for each producer the information described in § 1124.73(f).

§ 1124.62 Announcement of producer prices.

On or before the ~~14th~~ ^{13th} day after the end of each month, the market administrator shall announce publicly the following prices and information:

§ 1124.71 Payments to the producer-settlement fund.

Each handler shall make payment to the producer-settlement fund in a manner that provides receipt of the funds by the market administrator no later than the ~~16th~~ ^{15th} day after the end of the month (except as provided in § 1000.90). Payment shall be the amount, if any, by which the amount specified in paragraph (a) of this section exceeds the amount specified in paragraph (b) of this section:

§ 1124.72 Payments from the producer-settlement fund.

No later than the ~~18th~~ ^{17th} day after the end of each month (except as provided in § 1000.90), the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1124.71(b) exceeds the amount computed pursuant to § 1124.71(a). If, at such time, the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete the payments as soon as the funds are available.

§ 1124.73 Payments to producers and to cooperative associations.

(2) Final payment. For milk received during the month, payment shall be made so that it is received by each producer no later than the ~~19th~~ ^{18th} day after the end of the month (except as provided in § 1000.90) in an amount equal to not less than the sum of: