§ 1001.1

Subpart—Order Regulating Handling

GENERAL PROVISIONS

§ 1001.1 General provisions.

The terms, definitions, and provisions in part 1000 of this chapter apply to this part 1001. In this part 1001, all references to sections in part 1000 refer to part 1000 of this chapter.

DEFINITIONS

§ 1001.2 Northeast marketing area.

The marketing area means all the 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:

CONNECTICUT, DELAWARE, MASSACHUSETTS, NEW HAMPSHIRE, NEW JERSEY, RHODE ISLAND, VERMONT AND DISTRICT OF COLUMBIA

All of the States of Connecticut, Delaware, Massachusetts, New Hampshire, New Jersey, Rhode Island, Vermont and the District of Columbia.

MARYLAND COUNTIES

All of the State of Maryland except the counties of Allegany and Garrett.

NEW YORK COUNTIES, CITIES, AND TOWNSHIPS

All counties within the State of New York except Allegany, Cattaraugus, Chautauqua, Erie, Genesee, Livingston, Monroe, Niagara, Ontario, Orleans, Seneca, Wayne, and Wyoming; the towns of Conquest, Montezuma, Sterling and Victory in Cayuga County; the city of Hornell, and the towns of Avoca, Bath, Bradford, Canisteo, Cohocton, Dansville, Fremont, Pulteney, Hartville, Hornellsville, Howard, Prattsburg, Urbana, Wayland, Wayne and Wheeler in Steuben County; and the townships of Italy, Middlesex, and Potter in Yates County.

PENNSYLVANIA COUNTIES

Adams, Bucks, Chester, Cumberland, Dauphin, Delaware, Franklin, Fulton, Juniata, Lancaster, Lebanon, Montgomery, Perry, Philadelphia, and York.

§ 1001.3 Route disposition.

See §1000.3.

§ 1001.4 Plant.

(a) Except as provided in paragraph (b) of this section, plant means the land, buildings, facilities, and equipment constituting a single operating unit or establishment at which milk or milk products are received, processed, or packaged, including a facility described in paragraph (b)(2) of this section if the facility receives the milk of more than one dairy farmer.

(b) Plant shall not include:

(1) A separate building without stationary storage tanks that is used only as a reload point for transferring bulk milk from one tank truck to another or a separate building used only as a distribution point for storing packaged fluid milk products in transit for route disposition;

(2) An on-farm facility operated as part of a single dairy farm entity for the separation of cream and skim milk or the removal of water from milk; or

(3) Bulk reload points where milk is transferred from one tank truck to another while en route from dairy farmers’ farms to a plant. If stationary storage tanks are used for transferring milk at the premises, the operator of the facility shall make an advance written request to the market administrator that the facility shall be treated as a reload point. The cooling of milk, collection of samples, and washing and sanitizing of tank trucks at the premises shall not disqualify it as a bulk reload point.

§ 1001.5 Distributing plant.

See §1000.5.

§ 1001.6 Supply plant.

See §1000.6.

§ 1001.7 Pool plant.

Pool plant means a plant, unit of plants, or system of plants as specified in paragraphs (a) through (f) of this section, but excluding a plant described...
in paragraph (b) of this section. The pooling standards described in paragraphs (c) and (f) 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 § 1001.7(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 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 fluid milk products are transferred or diverted to plants described in paragraph (a) or (b) of this section subject to the additional conditions described in this paragraph. In the case of a supply plant operated by a cooperative association handler described in §1000.9(c), fluid milk products that the cooperative delivers to pool plants directly from producers' farms shall be treated as if transferred from the cooperative association's plant for the purpose of meeting the shipping requirements of this paragraph.

(1) In each of the months of January through August and December, such shipments and transfers to distributing plants must not equal less than 10 percent of the total quantity of milk (except the milk of a producer described in §1001.12(b)) that is received at the plant or diverted from it pursuant to §1001.13 during the month;

(2) In each of the months of September through November, such shipments and transfers to distributing plants must equal not less than 20 percent of the total quantity of milk (except the milk of a producer described in §1001.12(b)) that is received at the plant or diverted from it pursuant to §1001.13 during the month;

(3) If milk is delivered directly from producers' farms that are located outside of the states included in the marketing area or outside Maine or West Virginia, such producers must be grouped by state into reporting units and each reporting unit must independently meet the shipping requirements of this paragraph; and

(4) Concentrated milk transferred from the supply plant to a distributing plant for an agreed-upon use other than Class I shall be excluded from the supply plant's shipments in computing the percentages in paragraphs (c)(1) and (2) of this section.

(d) Any distributing plant, located within the marketing area as described on May 1, 2006, in §1001.2:

(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 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 §1001.7(a), (b), or (e);

(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 §1001.10 with less than three million
§ 1001.7

pounds during the month of route dis-
positions and/or transfers of packaged
fluid milk products to other plants.

(2) [Reserved]

(e) Two or more plants that are lo-
cated in the marketing area and oper-
ated by the same handler may qualify
as a unit by meeting the total and in-
area route distribution requirements
specified in paragraph (a) of this sec-
tion subject to the following additional
requirements:

(1) At least one of the plants in the
unit qualifies as a pool distributing
plant pursuant to paragraph (a) of this
section;

(2) Other plants in the unit must
process at least 60 percent of monthly
receipts of producer milk only as Class
I or Class II products and must be lo-
cated in the Northeast marketing area,
as defined in §1001.2, in a pricing zone
providing the same or a lower Class I
price than the price applicable at the
distributing plant(s) included in the
unit; and

(3) A written request to form a unit,
or to add or remove plants from a unit,
or to cancel a unit, must be filed with
the market administrator prior to the
first day of the month for which unit
formation is to be effective.

(f) Two or more supply plants oper-
ated by the same handler, or by one or
more cooperative associations, may
qualify for pooling as a system of
plants by meeting the applicable per-
centage requirements of paragraph (c)
of this section in the same manner as a
single plant subject to the following
additional requirements:

(1) A supply plant system will be ef-
fective for the period of August 1
through July 31 of the following year.
Written notification must be given to
the market administrator listing the
plants to be included in the system
prior to the first day of July preceding
the effective date of the system. The
plants included in the system shall be
listed in the sequence in which they
shall qualify for pool plant status
based on the minimum deliveries re-
quired. If the deliveries made are insuf-
cient to qualify the entire system for
pooling, the last listed plant shall be
excluded from the system, followed by
the plant next-to-last on the list, and
continuing in this sequence until re-
maining listed plants have met the
minimum shipping requirements; and

(2) Each plant that qualifies as a pool
plant within a system shall continue
each month as a plant in the system
through the following July unless the
plant subsequently fails to qualify for
pooling, the handler submits a written
notification to the market adminis-
trator prior to the first day of the
month that the plant be deleted from
the system, or that the system be dis-
continued. Any plant that has been so
deleted from the system, or that has
failed to qualify as a pool plant in any
month, will not be part of the system
for the remaining months through
July. For any system that qualifies in
August, no plant may be added in any
subsequent month through the fol-
lowing July unless the plant replaces
another plant in the system that has
ceased operations and the market ad-
ministrator is notified of such replace-
ment prior to the first day of the
month for which it is to be effective.

(g) The applicable shipping percent-
ages of paragraphs (c) and (f) 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 uneco-
nomic shipments. Before making such
a finding, the market administrator
shall investigate the need for adjust-
ment either on the market administra-
tor'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 in-
vestigation shows that an adjustment
of the shipping percentages might be
appropriate, the market administrator
shall issue a notice stating that an ad-
justment is being considered and invite
data, views and arguments. Any deci-
sion 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 plant;

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

(3) A plant qualified pursuant to
paragraph (a) of this section that is lo-
cated within the marketing area if the
§ 1001.12 Producer.

(a) Except as provided in paragraph (b) of this section, producer means any person who:

(1) Operates a dairy farm and a distributing plant from which there is monthly route disposition in the marketing area during the month;

(b) Receives milk solely from own farm production or receives milk that is fully subject to the pricing and pooling provisions of this or any other Federal order;

(c) Receives at its plant or acquires for route disposition no more than 150,000 pounds of fluid milk products from handlers fully regulated under any Federal order. This limitation shall not apply if the producer-handler’s own farm production is less than 150,000 pounds during the month;

(d) Disposes of no other source milk as Class I milk except by increasing the nonfat milk solids content of the fluid milk products; and

(e) Provides proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary to produce all Class I milk handled (excluding receipts from handlers fully regulated under any Federal order) and the processing and packaging operations are the producer-handler’s own enterprise and at its own risk.

(f) Any producer-handler with Class I route dispositions and/or transfers of packaged fluid milk products in the marketing area described in §1131.2 of this chapter shall be subject to payments into the Order 1131 producer settlement fund on such dispositions pursuant to §1000.76(a) and payments into the Order 1131 administrative fund provided such dispositions are less than three million pounds in the current month and such producer-handler had total Class I route dispositions and/or transfers of packaged fluid milk products from own farm production of three million pounds or more the previous month. If the producer-handler has Class I route dispositions and/or transfers of packaged fluid milk products into the marketing area described in §1131.2 of this chapter of three million pounds or more during the current month, such producer-handler shall be subject to the provisions described in §1131.7 of this chapter or §1000.76(a).

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