

UNITED STATES DEPARTMENT OF AGRICULTURE

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Agricultural Marketing Service  
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FEDERAL MILK ORDERS 124 & 131

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January 27, 2009

To: Handlers and Interested Parties, Pacific Northwest Federal Marketing Order 124

Subject: Request for Comments Regarding Diversion Limits, Delivery Requirements for Producers, and Delivery Requirements for an Association(s) Operating a Cooperative Pool Manufacturing Plant(s) and for Pool Supply Plants

**SUMMARY:** Written comments are invited on a requested investigation of current pooling and performance standards relating to milk under the Pacific Northwest marketing order.

The proposed investigation was requested by means of a letter sent to Northwest dairy farmers and interested parties by the Washington State Dairy Federation (WSDF), a voluntary membership organization representing the state's dairy farmers. The letter was accompanied by a petition. The petition requested that the Market Administrator investigate the need for tightening pool and performance standards under the Pacific Northwest Order. This office has received 167 signatures associated with the petition. A copy of the petition is attached, and a copy of the letter and petition are posted on the Market Administrator's website at <http://www.fmmaseattle.com/currentnews.htm>.

**DATES:** Comments are to be received by the Market Administrator no later than February 17, 2009.

**ADDRESS:** Comments should be sent to the Market Administrator, Pacific Northwest Marketing Area, 1930 - 220th Street SE, Suite 102, Bothell, Washington 98021-8471. Comments may be submitted via FAX at 425-487-2775 or e-mailed to [fmmaseattle@fmmaseattle.com](mailto:fmmaseattle@fmmaseattle.com).

**FOR FURTHER INFORMATION:** Contact John Mykrantz, Pacific Northwest Marketing Area, 1930 - 220th Street SE, Suite 102, Bothell, Washington 98021-8471, telephone 425-487-6009, e-mail [fmmaseattle@fmmaseattle.com](mailto:fmmaseattle@fmmaseattle.com).

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that revisions in delivery requirements for producers and plants are being considered pursuant to §1124.13(e)(6) and §1124.7(g), respectively. Specifically, adjustments are being considered for the following provisions: the 80% diversion limit for pool handlers; the 3-days' production delivery requirement; and the 20% delivery requirement for an association(s) operating a cooperative pool manufacturing plant(s) and pool supply plants.

To enable better evaluation and resolution of this complex matter, the Market Administrator has requested that all interested parties submit written data, views or arguments with respect to the action being considered. All persons who desire to do so should send them to the Market Administrator,

1930 - 220th Street SE, Suite 102, Bothell, Washington 98021-8471, via FAX at 425-487-2775, or e-mailed to [fmmaseattle@fmmaseattle.com](mailto:fmmaseattle@fmmaseattle.com) to be received no later than February 17, 2009.

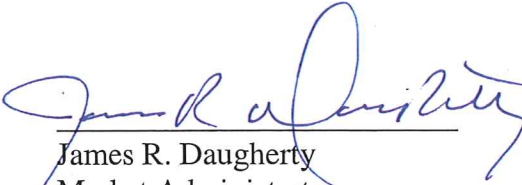
**Statement of Consideration:** The investigation could result in a revision of the delivery requirements for producers and plants pursuant to §1124.13(e)(6) and §1124.7(g), respectively.

Section 1124.13(e)(6) of the Pacific Northwest milk order states that “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.”

Section 1124.7(g) of the Pacific Northwest milk order states that “the applicable shipping percentages 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.”

WSDF is a voluntary membership organization formed by dairy farmers in 1892 to promote the interests of dairy farmers in the state of Washington. WSDF submitted to the Market Administrator a letter and petition with 167 signatures requesting an investigation concerning current pooling provisions, specifically diversion limits, delivery requirements, and shipping percentages. A copy of the petition is attached, and a copy of the letter and petition are posted on the Market Administrator’s website at <http://www.fmmaseattle.com/currentnews.htm>.

The Market Administrator’s ability to adjust these requirements is described in §1124.13(e)(6) and §1124.7(g). Based on the WSDF letter and petition, it is therefore determined that it is appropriate to investigate and consider revisions in the delivery requirements set forth in §1124.13 and §1124.7.

  
James R. Daugherty  
Market Administrator

Enclosure

January 12, 2009

To: James Daugherty, Seattle Milk Marketing Administrator

1930-220th Street SE, Suite 102  
Bothell, Washington 98021-8471  
Phone: 425-487-6009  
Fax : 425-487-2775

From: The Undersigned Producers and Interested Parties,

The WSDP Board of Directors; Chuck Hayes, President

Re: Federal Order 124 Rules

The following undersigned producers request you undertake an investigation as outlined in the Federal Rules (part 1124) governing milk marketing under the Pacific Northwest Order published March 1<sup>st</sup> 2007. Specifically this request is made under subsection 1124.13 (e) (6).

The Federal Register of Friday September 6, 2002 contains a summary of the tentative decision establishing standards (currently 3 days) for pooling eligibility and handler diversion limits once that producer milk is eligible (currently 80%). The register also contains numerous findings and conclusions. Testimony by all Cooperatives and Associations was unanimous in support of changes the order to prevent... "Artificial" pooling or "pool loading"... To accomplished these outcomes, a proposal was submitted for consideration by your agency by the Cooperatives and Associations (proposal 2) that required six days "touch base" and 80% year-round diversion limits. Only three days "touch-base" was included in the final rules in 2002. The following discussion summarizes why we believe additional action is needed at this time.

#### **Discussion:**

It is clear from the testimony included in the Federal Register that all parties were interested in limiting "pool-loading"; and in establishing performance requirements for milk associated with the Pacific Northwest Order. Testimony at the time identified a "shortcoming of the current pooling provisions that has allowed milk which performs no reasonable service in meeting fluid milk demands to be pooled on the Pacific Northwest Order." It was testified that the diversion limits under the rules at that time were 99% for March-August and 80% for September- February; this was believed inadequate and it was recommended to establish a year-round diversion limit of 80% and a six day "touch-base provision". The 80% Diversion and three days rather than six days of a producer's monthly production was included in the rules to achieve the desired performance.

However your records indicate present performance requirements continue to allow large volumes of milk to be pooled of questionable service to the Class I market; little different than before. It appears the rules currently allow diversion of 99% of a pooled producer's annual milk production. (Only three days/month must "touch base" at a supply plant to qualify the producer's entire monthly production, this is slightly less than

10% of a producer's volume. The rules then allow of 80% of that milk to be diverted to manufacturing or non-pool plants, except that it appears that pool plants need only qualify for 6 of the 12 months under 1124.7 (c) (1) . Therefore  $10\% \times 20\% \times .5 = 1\%$  of the pooled milk must be delivered to a distributing plant for potential use as Class I.)

#### **Service to the Market:**

Following the demise of the Western Order, in summer of 2005, large volumes of milk in Southern Idaho began to be pooled on the Pacific Northwest Order. The volume of milk pooled on the PNWO from counties in Southern Idaho increased steadily for the next year, peaking in August of 2006 with approximately 94 million pounds of milk associated (pooled) on the PNW order (the volume of milk actually used as class I in the Pacific Northwest that month was 189.4 million pounds). It is difficult to imagine, as one witness in the 2002 hearing stated, "the service demonstrated to the Class I market" by milk pooled in a place so removed as Southern Idaho, in volumes so large as to represent 50% of all the Class I fluid uses in the entire Pacific Northwest Market. It is especially difficult to imagine how essential this milk is to the market when the pooled volume declined from over 90 million pounds to around 55 million pounds per month in the fall of 2006 and winter of 2007, and then suddenly dropped to zero in March of 2007. No milk was pooled on the PNWO from March of 2007 until February 2008 when 53 million pounds of milk was once again pooled. Pooling of 50 to 60 million pounds of Southern Idaho Milk has continued ever since. If this milk were in fact essential and linked to truly supplying the market it would have remained pooled.

It was the stated goal of All parties involved in the 2002 rule making process to make revisions:

- ♣ To identify producers and milk realistically serving the Federal Order Class I market.
- ♣ To establish reasonable year-round diversion limits.
- ♣ To prevent pooling of milk that does not provide service to the Class I needs of the market and thus lowers returns to dairy farmers whose milk is actually supplying the Class I market.

It is clear, in view of the historical pattern of milk pooling that not one of these goals were met. We submit that adjustments to performance rules are needed. Producers actually servicing the Class I market of the Federal Order 124 have been financially impacted by this large, erratic volume of "out of order" milk. This milk, while legally pooled under existing rules, has a nebulous connection to supplying the Class I market of the Pacific Northwest.

We are asking for you to begin an investigation of these concerns. We hope you will agree, once the initial investigation is complete that a formal process is needed (as allowed in 1124) for considering adjustments to tighten the "pooling and performance" standards of milk associated with the Class I market of the Pacific Northwest Federal Order 124.

On behalf of the all signatories we look forward to assisting in anyway possible.

**You May Remit this letter with Signatures, BY FAX, By January 14<sup>th</sup> to:**

James Daugherty, Market Administrator  
1930-220th Street SE, Suite 102  
Bothell, Washington 98021-8471  
Phone: 425-487-6009  
Or via Fax: 425-487-2775

**Or any pages with Signatures may also be submitted no later than January 12<sup>th</sup> to FAX # 360-482-4069 C/O WSDP for submittal to the Seattle Market Administrator.**

We, the undersigned, as interested parties (as defined in part 1124) are requesting you undertake an investigation as outlined in the above letter and in the Federal Rules (part 1124) governing milk marketing under the Pacific Northwest Order published March 1<sup>st</sup> 2007. Specifically we are making this request under subsection 1124.13 (e) (6) but ask that due consideration be given to any other sections, relevant to the issue of pooling performance.

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