

Order Language

The three proponents offer the following language, and comments on our intentions for the language, to support the changes we wish to make to the producer handler definition. This language and comments are intended for both the Pacific Northwest and Arizona – Las Vegas Marketing Areas.

As a part of this commentary we will make some modification to our original submission. Wording noted with a ~~strikethrough~~, indicates language we wish to delete from our original submission. Wording noted by **bold text and underline** indicates language we wish to insert into our original submission. **Additionally wording noted by bold text, larger type and a double underline represents modifications to our language that we wish to make now.**

Amend the Producer-handler definition of the Arizona-Las Vegas milk marketing order by revising § 1131.10 to read as follows:

§ 1131.10 Producer-handler.

Producer-handler means a person who operates a dairy farm(**s**) and a distributing plant(**s**) from which there is route distribution within the marketing area during the month not

disposition in the marketing area and the total route disposition and transfers in the form of packaged fluid milk products to other distributing plants during the month does not exceed 3 million pounds and who **provides proof satisfactory to the Market Administrator that it** ~~the market administrator has designated a producer handler after determining that all of the requirements of this section have been met~~ **meets all of the requirements of this section for designation.**

(a) Requirements for designation. Designation of any person as a producer-handler by the market administrator shall be contingent upon meeting **all** the conditions set forth in paragraphs (a)(1) through ~~(5)~~ **(6)** of this section. Following the cancellation of a previous producer-handler designation, a person seeking to have their producer-handler designation reinstated must demonstrate that these conditions have been met for the preceding month.

(1) The care and management of the dairy animals and the other resources and facilities designated in paragraph (b)(1) of this section necessary to produce all Class I milk handled (excluding receipts from handlers fully regulated under any Federal order) are under the complete and exclusive control, ~~ownership~~ and management of the producer-handler and are operated as the producer-handler's own enterprise and its ~~own~~ **sole** risk.

(2) The plant operation designated in paragraph (b)(2) of this section at which the producer-handler processes and packages, and

from which it distributes, its own milk production is under the complete and exclusive control, ownership and management of the producer-handler and is operated as the producer-handler's own enterprise and at its sole risk.

(3) ~~The plant operation designated in paragraph (b)(2) of this section at which the producer handler processes and packages, and from which it~~ **The producer-handler neither receives at its designated milk production resources and facilities, nor receives, handles, processes, or** distributes at or through any of its designated milk handling, processing, or distributing resources and facilities other source milk products for reconstitution into fluid milk products or fluid milk derived from any source other than:

- (i) Its designated milk production resources and facilities (own farm production);
- (ii) Pool handlers and plants regulated under any Federal order within the limitation specified in paragraph (c)(2) of this section; or
- (iii) Nonfat milk solids which are used to fortify fluid milk products.

(4) The producer-handler is neither directly nor indirectly associated with the business control or management of, nor has a financial interest in, another handler's operation; nor is any other handler so associated with the producer-handler's operation.

(5) No milk produced by the herd(s) or on the farm(s) that supply milk to the producer-handler's plant operation is:

(i) Subject to inclusion and participation in a marketwide equalization pool under a milk classification and pricing program under the authority of a State government maintaining marketwide pooling of returns, or

(ii) Marketed in any part ~~as Class I milk to the non-pool distributing plant of any other handler~~ **to a non-pool distributing plant.**

(6) The producer-handler does not distribute fluid milk products to a wholesale customer who is served by a plant described in § 1131.7(a), (b), or (e), or a handler described in § 1000.8(c) that supplied the same product in the same-sized package with a similar label to a wholesale customer during the month.

(b) Designation of resources and facilities. Designation of a person as a producer-handler shall include the determination of what shall constitute **the person's** milk production, handling, processing, and distribution resources and facilities, all of which shall be considered an integrated operation, ~~under the sole and exclusive ownership of the producer-handler.~~

(1) Milk production resources and facilities shall include all resources and facilities (milking herd(s), buildings housing such herd(s), and the land on which such buildings are located) used for

the production of milk ~~which are solely owned, operated, and~~ which the producer-handler has designated as a source of milk supply for the producer-handler's plant operation. ~~However, for purposes of this paragraph, any such milk production resources and facilities which do not constitute an actual or potential source of milk supply for the producer handler's operation shall not be considered a part of the producer handler's milk production resources and facilities.~~

(2) Milk handling, processing, and distribution resources and facilities shall include all resources and facilities (including store outlets) used for handling, processing, and distributing fluid milk products which are solely **or partially** owned by, and directly **or indirectly** operated or controlled by the producer-handler or in which the producer-handler in any way has an interest, including any contractual arrangement, or over which the producer-handler directly or indirectly exercises any degree of management **or** control.

(3) All designations shall remain in effect until canceled pursuant to paragraph (c) of this section.

(c) Cancellation. The designation as a producer-handler shall be canceled upon determination by the market administrator that any of the requirements of paragraph (a)(1) through ~~(5)~~ **(6)** of this section are not ~~continuing to be~~ met, or under any of the conditions described in paragraphs (c)(1), (2) or (3) of this section. Cancellation of a producer-handler's status pursuant to this paragraph shall be effective on the first day of the month following

~~the month in which the requirements were not met or the conditions for cancellation occurred~~ **conditions were not met.**

(1) Milk from the milk production resources and facilities of the producer-handler, designated in paragraph (b)(1) of this section, is delivered in the name of another person as producer milk to another handler.

(2) The producer-handler handles fluid milk products derived from sources other than the milk production facilities and resources designated in paragraph (b)(1) of this section, except that it may receive at its plant, or acquire for route disposition, fluid milk products from fully regulated plants and handlers under any Federal order if such receipts do not exceed 150,000 pounds monthly. This limitation shall not apply if the producer-handler's own-farm production is less than 150,000 pounds during the month.

(3) Milk from the milk production resources and facilities of the producer-handler is subject to inclusion and participation in a marketwide equalization pool under a milk classification and pricing plan operating under the authority of a State government.

(d) Loss of producer-handler status. Notwithstanding paragraph (a) of this section, loss of producer-handler status for exceeding the limits in (c) (2) or for having more than three million pounds of total route disposition and transfers in the form of packaged fluid milk products to other

distributing plants during the month shall only be effective in the months where the limits are exceeded.

~~(d)~~ **(e)** Public announcement. The market administrator shall publicly announce:

(1) The name, plant location(s), and farm location(s) of persons designated as producer-handlers;

(2) The names of those persons whose designations have been cancelled; and

(3) The effective dates of producer-handler status or loss of producer-handler status for each. ~~Such announcements shall be controlling with respect to the accounting at plants of other handlers for fluid milk products received from any producer handler.~~

~~(e)~~ **(f)** Burden of establishing and maintaining producer-handler status. The burden rests upon the handler who is designated as a producer-handler to establish **by proof satisfactory to the Market Administrator** through records required pursuant to §1000.27 that the requirements set forth in paragraph (a) of this section have been ~~and are continuing to be~~ met, and that the conditions set forth in paragraph (c) of this section for cancellation of the designation do not exist.