

marked by the ability and willingness to supply the Class I needs of that market. The witness also noted that pooling standards are individualized in their application and each market requires standards that work for the conditions that apply in that individual market. The witness quoted the Final Decision of milk order reform as follows: "the pooling provisions for the consolidated orders provide a reasonable balance between encouraging handlers to supply milk for fluid use and ensuring orderly marketing by providing a reasonable means for producers with a common marketing area to establish an association with the fluid market."

The DFA witness drew from the history of milk marketing and commented on the problems of producers in their attempts at improving their economic circumstances. The witness identified shortcomings of the marketplace resulting in the difficulty of the milk supply being able to service the market's fluid needs in a manner that treats all producers equitably. The superior negotiating position of milk buyers and the variations in supply and demand were examples provided by the witness that have always "tripped up" dairy farmers in their marketing efforts. The witness added that farmers' attempts to improve on past efforts always seemed to fail when one or more suppliers would find a way to opt out of the added cost of serving the market to obtain a higher return for themselves. Marketwide pooling, said the DFA witness, eliminated the differences in prices paid to suppliers within the same market and, in turn, eliminated the non-productive competitive drive for higher returns since everyone faced the same terms of trade. The witness also noted the absence of any action recommending any change to these fundamental features of milk orders and noted that every Federal order shares returns to all producers marketwide.

The DFA witness was of the opinion that the new Class I pricing structure, together with the interface of the pricing surface and the pooling provisions found in each order, resulted in significant changes in the marketplace for milk. The link between performance and pooling, said the witness, was altered by these reforms and needs to be reviewed. DFA noted that many entities, including themselves, moved quickly to take advantage of these changes in order rules. The witness indicated that when in a competitive dairy economy, an entity must make pooling decisions that aim to increase returns, and competitors must attempt to do the same or risk their competitive position.

Pooling provisions of Order 30 work well for milk produced in the marketing area, said DFA, but do not work well for milk produced out of the area. Producers need only deliver a day's production a single time to a pool plant to have their milk eligible for pooling. This, combined with no loss of producer eligibility, provided a producer does not deliver to another Federal order plant, makes Order 30 an attractive market in which to pool milk, the witness stated.

The witness also relied on, and drew heavily from, the order reform Final Decision (64 FR 16026) which explained the marketing area boundaries of the consolidated Upper Midwest marketing area. Although the prior marketing order areas of the Chicago Regional and Upper Midwest orders did not have a considerable degree of overlapping fluid milk disposition, they did have an extensive overlapping procurement area, according to the witness. In light of this, the witness noted that the reform Final Decision could therefore find no justification on the basis of overlapping sales for increasing the consolidated marketing area beyond what was adopted. Rather, it is the extensive overlapping of a common procurement area, or milkshed, that is the most compelling reason for explaining the boundaries of the consolidated Upper Midwest marketing area.

The witness noted, too, that there was extensive discussion early in the construct of the 1996 Farm Bill concerning the merits of having a single national Federal order. Such an outcome would have resulted in a single blend price across the entire country. Noting that Congress debated several proposals and several economic studies over this issue, Congress rejected the idea of a single marketing order with the premise of one blend price. According to the witness, open pooling, which may result in blend prices being equalized across a large territory, is counter to the intent of Congress and the legislative directive of the Farm Bill—to consolidate the orders into no fewer than 10 and not more than 14.

The DFA witness expressed alarm about milk from distant areas sharing in the blend price when that milk neither serves the fluid market nor balances the market when extra milk is needed by fluid processors. The witness referenced the rejection of the concept of open pooling discussed in the reform Final Decision and indicated that the decision rejected this because open pooling provides no reasonable assurance that milk will be made available to satisfy the fluid needs of the market. The witness also noted further that

proposals to create and fund "stand-by" pools were also rejected.

DFA was of the opinion that open pooling is not appropriate for Order 30. Additionally, because of the distance and cost involved in moving milk to the market, milk needed in the fall months to accommodate increased demand because of increased school milk sales—or to provide a manufacturing outlet for milk produced in excess of fluid needs—would not be provided. It is irrelevant, said the witness, if the milk in question originates from California or any other place because such milk is no more burdensome than distant milk produced in Idaho or any other area. Under the open-pooling concept, said DFA, "distant" milk able to pool alongside "local" deliveries only serves to pyramid the volume pooled.

Prohibiting the simultaneous pooling of milk on a State-operated marketwide pool and the Order 30 pool (the focus of Proposal 1) said DFA, does not fully address the pooling problems at hand. The witness provided evidence and testimony that showed an increasing amount of "distant" milk pooled on the Upper Midwest order which, they maintain, is not serving the Class I needs of the market. The witness submitted analysis demonstrating that when milk is pooled without being available for Class I use—referred to as "paper pooled"—on Order 30, returns to local producers who are consistently serving the fluid market are decreased.

Analysis was provided by DFA to illustrate how the pooling of milk on Order 30 has changed by examining the amount of milk pooled on the order and where the milk was produced. Using October 1997 as a reference time period prior to the consolidation of the orders, the witness provided data showing that 2.4 billion pounds of milk were associated with the Chicago Regional and Upper Midwest markets, but only 1.6 billion pounds of milk were pooled because of class-price relationships. The 2.4 billion pounds were produced by 27,250 producers located in 13 States from Tennessee to Minnesota and from New Mexico to Michigan. The witness noted that over 93 percent of the producer milk was produced within the consolidated marketing area, and 91.4 percent of the milk pooled was produced within the States of Wisconsin and Minnesota. In comparison, the witness provided data subsequent to the implementation of order reform: During June 2001, 12,748 producers pooled 1.5 billion pounds of milk on consolidated Order 30, with a total of 84 percent of the milk pooled produced within the consolidated marketing area and 79 percent