

producer receipts to pool distributing plants and certain other plants each month in order to qualify for being pooled. Therefore, producer milk included in reports by handlers described in § 1000.9(c) is included in determining whether or not the handler has qualified for being pooled on the order. No distinction is made by the order whether the milk pooled is "local" or "distant." Thus all of the producer milk of the handler meets the same qualification standards regardless of the physical location of the producer or the milk of a producer.

DFA maintains that the proposal seeking only to eliminate double dipping (Proposal 1) does not go far enough in addressing their general concerns about performance standards for the system of orders, including the Upper Midwest order. The argument is troublesome. On one hand, DFA fundamentally asserts that performance standards are critical to the orderly marketing of milk and for determining those participants who are actually serving the fluid market, including the Order 30 market, stressing that only these participants should share in the benefits of the pool. At the same time, by their own testimony, DFA engages in the practice of double dipping, yet does not find double dipping disruptive to the orderly marketing of milk, even when such "distant" milk from California will rarely, if ever, again be shipped to pool plants, including distributing plants regulated by the order. This decision finds little logic in asking for a finding that no disorder results from allowing the simultaneous pooling of distant milk under California's State operated system and on Order 30, while at the same time asking for a finding that alternative performance standards are needed because of the disruptive effects to orderly marketing by pooling "distant" milk which does not consistently service the fluid market.

Pooling standards of milk orders, including Order 30, are intended to ensure that an adequate supply of milk is supplied to meet the Class I needs of the market and to provide the criteria for identifying those who are reasonably associated with the market for sharing in the Class I proceeds. Pooling standards of the order are represented in the *Pool plant*, *Producer*, and the *Producer milk* definitions of the order. Taken as a whole, these definitions set forth the criteria for pooling. Pooling standards should continue to be performance based in Order 30. This is the only viable basis for determining those eligible to share in the pool. It is primarily the additional revenue from

the Class I use of milk that adds additional revenue, and it is reasonable to expect that only those producers who consistently supply the market's fluid needs should be the ones to share in the distribution of pool proceeds.

With regard to the Final Decision for the reform of the Federal milk order program, it is true that the common procurement area was the most compelling basis in forming the consolidated Upper Midwest marketing area. However, it is not the procurement area that provides the additional revenue to the pool. Rather, the revenue is derived largely from the Class I use of milk by regulated handlers that have Class I sales in the marketing area. In this regard, it is not important who provides the milk for Class I use or from where this milk originates. The order boundaries of the Upper Midwest order were not intended to limit or define which producers, which milk of those producers, or which handlers could enjoy in the benefits of being pooled on Order 30. What is important and fundamental to all Federal orders, including Order 30, is the proper identification of producers, the milk of those producers, and handlers that should share in the market's pool proceeds.

Pooling of "distant" milk on the Upper Midwest order is neither new nor without precedent. The record testimony and evidence show milk pooled on Order 30 from nearly all corners of the country. However, this decision acknowledges that with the advent of the economic incentives for California milk to pool on Order 30 and, at the same time, enjoy the benefits of being pooled under California's State-operated milk pooling program, significantly more milk has come to be pooled that has no legitimate association with the integral milk supplies of Order 30 pool plants. The association at present has been made possible only through what some market participants describe as a regulatory loophole. The Upper Midwest order also provides a significant degree of pooling flexibility in the form of provisions allowing system and unit pooling. These provisions promote the orderly marketing of milk by minimizing the inefficient movement of milk for the sole purpose of meeting pooling standards.

This final decision finds basic agreement with some of the reasons offered in testimony and reiterated in briefs by opponents to DFA's proposal for organizing "distant" milk into State units. Requiring each State unit to ship at least 10 percent of the quantity of milk to a distributing plant regulated

under the order effectively sets a performance standard different from the States that comprise Order 30. For example, of the milk received from Idaho, the DFA proposal would establish a standard for at least 10 percent of such milk to be shipped to a distributing plant in order for this milk to be producer milk pooled on the order. However, the same would not be required, for example, that 10 percent of all Wisconsin milk be shipped to distributing plants regulated under the order. It is the ability of milk from California to double dip that is the primary source of disorderly marketing conditions and for much more milk being pooled on Order 30. By eliminating the ability to double dip, it is reasonable to conclude that California milk is unlikely to be pooled on Order 30 for economic reasons illustrated in DFA's testimony and analysis contained in the record of this proceeding.

In their exceptions to the tentative final decision, DFA indicated disappointment that their proposal for establishing "state units" for milk pooling purposes was not adopted. Their exception asserted that without the adoption of this proposal milk located distant from the Upper Midwest marketing area would be able to be pooled without demonstrating any actual service to the market's fluid needs. Their exceptions further asserted that by not adopting the "state units" pooling provision, the tentative final decision failed to properly distinguish between "in area" and "out of area" milk for pooling purposes. In addition, their exception criticized the tentative decision because it does not recognize geographic location as a pertinent market factor in determining milk's qualification for pooling.

Notwithstanding DFA's exception, the record does not support adopting the "state unit" or location-based performance standards for pooling milk on the order for the reasons articulated in the tentative decision. The marketing conditions of the Upper Midwest marketing area do not exhibit the need for performance standards beyond those adopted in the tentative final decision. Accordingly, the exceptions submitted for adopting location-based performance standards are not persuasive and are therefore denied. The remaining issue is establishing appropriate diversion limits for all pool plants, including limits for distributing plants which limits currently do not exist in the Upper Midwest milk order provisions.

In addition to describing what a dairy farmer must do to become a producer under the order, the producer definition of the order provides that a full day's