

demonstrating a service in meeting the Class I needs of the market.

A witness appearing on behalf of NDA testified in opposition to adopting Proposal 3. The witness was of the opinion that the net shipments provision for supply plants was designed and intended to reduce the amount of milk that could be pooled on the Western order. The witness explained that no other Federal milk order contained a net shipments provision because pool supply plants and other reserve plants provide a benefit by balancing the needs of the fluid market and pooling milk in a way that prevent disorderly marketing conditions from arising.

A witness representing Gossner opposed the establishment of a net shipment provision for the Western order. Additionally a witness representing Glanbia Foods, Inc. (Glanbia), and another witness representing Davisco Foods International (Davisco), offered testimony in opposition to the adoption of a net shipments provision for the Western order. Glanbia is a handler that operates two cheese plants located in the Western marketing area, and Davisco is a handler that operates proprietary cheese plants located in Idaho and in Minnesota. The Glanbia witness testified that a net shipments provision would preclude many producers located in Idaho from being pooled on the Western order when their milk is not needed for fluid use even though it is available and stands ready and able to supply the Class I needs of the marketing area. The Gossner witness indicated that market alternatives for pooling milk within the Western region were already very limited and the adoption of this proposal could entirely eliminate them. The Davisco witness testified that a net shipments provision would limit their ability to pool their producers and viewed this as essentially erecting barriers to market entry on the Western order.

A witness representing KDK, Inc. (KDK), a fluid processing plant located in Draper, Utah, also presented testimony in opposition to adopting a net shipments provision. The witness indicated that their plant transfers milk to exempt plants and, on occasion, to producer-handlers. The witness was of the opinion that adoption of a net shipments provision would result in milk currently associated with their plant no longer being able to be pooled because their supplier would be unable to meet the shipping standard.

b. Cooperative Supply Plant Performance Standards

A proposal, published in the hearing notice as Proposal 4, seeking to increase the cooperative supply plant pooling standard should not be adopted. Proposal 4, offered by DFA, seeks to increase the cooperative supply plant performance standard that specifies the percentage of cooperative producer milk that needs to be physically received by a distributing plant of the Western order to 50 percent in order for the cooperative supply plant to qualify as a pool plant of the order.

The Western order currently provides for a cooperative association that operates a plant as a unique type of supply plant. The cooperative association's plant must be located within the marketing area and at least 35 percent of the milk which the cooperative association handles is physically received at a Western order distributing plant during the month or the immediately preceding 12-month period.

In offering Proposal 4, the DFA witness testified that while no plants currently utilize the cooperative supply plant provision, some cooperatively-owned manufacturing plants may seek such status if DFA's other proposal to decrease the diversion limit standard, (discussed later in this decision) is adopted. The witness maintained that increasing the cooperative supply plant shipping standard is intended to ensure that plants opting for this type of pool plant status would be demonstrating adequate performance in supplying the Class I needs of the Western marketing area.

Opposition to Proposal 4 was offered by witnesses representing Glanbia, Gossner, and Davisco. The Glanbia witness was of the opinion that the proposal was designed to prevent market entry and participation by dairy farmers who may be attracted to the Western market. The Gossner witness stated that producers should have as many options as possible in marketing their milk because it brings about increased competition and may also bring better milk prices. The Davisco witness asserted that Proposal 4 would only decrease opportunities for Idaho milk from becoming pooled on the Western order. This would, the witness said, pressure Idaho producers to find other means by which to pool their milk on the Western order.

The NDA witness also testified in opposition to Proposal 4. The witness was of the opinion that increasing the cooperative supply plant performance standard would create competitive

inequities and may even create new disorderly marketing conditions. The witness indicated that to be able to utilize the cooperative supply plant provision, Class I sales would need to be increased and to accomplish this, a cooperative would likely need to engage in price cutting tactics to win sales from competitors. The witness predicted that an outcome such as this would be disorderly.

c. Standards for Producer Milk

A proposal, published in the hearing notice as Proposal 6, seeking to lower the diversion limit standard for producer milk should not be adopted. This proposal was offered by DFA. Specifically, Proposal 6 seeks to reduce the diversion limit for producer milk to nonpool plants to 70 percent of total receipts. The Western order currently provides a diversion limit standard for producer milk of 90 percent of total milk receipts. The DFA witness was of the opinion that the pooling of milk which does not demonstrate a service in supplying the needs of the Class I market is inconsistent with Federal order policy. Returns to producers who regularly supply the Class I market are unnecessarily reduced when milk is pooled that cannot demonstrate such service, the witness asserted.

The DFA witness also testified that milk which does not actually supply the Class I needs of the market, but shares in the revenue generated from fluid milk sales, is an indicator of faulty pooling provisions. The witness asserted that if the current pooling standards are not amended, local dairy farmers who are actually supplying the local Class I market will continue to receive lower returns.

The DFA witness testified that the Western order's current diversion limit standard of 90 percent is inadequate because it allows milk to be pooled on the order than can not demonstrate a regular and consistent service in meeting the needs of the fluid market. According to the witness, it is appropriate to lower the limit on the amount of producer milk that pool plants can divert to nonpool plants.

The Commissioner of the Utah Department of Agriculture and Food testified in support of Proposal 6. The witness reasoned that by lowering the diversion limit standard, prices paid to Utah dairy farmers would increase. Lowering the diversion limit standard would increase the relative Class I use of milk pooled on the order, explained the witness. It would also allow Utah family dairy farms to compete fairly, and be compensated more equitably for the service they provide, the witness