

The Glanbia witness was of the opinion that eliminating the PBTH provision would inhibit the ability and freedom of dairy farmer to choose how to market their milk. The witness thought this may also force producers to join a cooperative to assure that their milk would be pooled on the order, an outcome consistent with lowering the diversion limit standard. A brief submitted by Glanbia and Davisco continued stressing their opposition to Proposal 5. Their brief maintained, among other things, that elimination of the PBTH provision would prevent many producers, who stand willing to service the Class I market, from being able to pool their milk on the Western order.

A witness representing Stoker Wholesale, Inc., a pool distributing plant located in Idaho, testified against eliminating the PBTH provision. The witness indicated that if adopted, the proposal would jeopardize their ability to remain competitive with other processors in the marketing area. The Stoker witness indicated that their main concern was that the removal of the PBTH provision would allow a dominant cooperative to gain too much market power. In this regard, the witness foreshadowed that Stoker might be forced to purchase milk from a dominant cooperative and along with paying the order's minimum class prices, would also be forced to pay other charges dictated by the cooperative. Such an outcome would be devastating to Stoker and hinder their ability to compete in the Western marketing area, concluded the witness.

Two Idaho dairy farmers testified in opposition to Proposal 5. The farmers were of the opinion that if the PBTH provision was eliminated, farmers would have to pool their milk through a cooperative. One witness testified that this would eliminate the number of outlets available to farmer's to market their milk and put the market's milk supply in the hands of fewer entities. The witness also noted that while the fewer entities controlling the milk supply could raise their prices, it would also result in higher retail costs to consumers. The witnesses were also of the opinion that the low milk prices they are facing arise from complicated economic and political factors and are not caused by dairy farmers having the opportunity to pool their own milk.

A proposal, published in the hearing notice as Proposal 11, seeking to reach a balance of assuring handler equity while retaining the PBTH provision should not be adopted. Proposal 11 was offered by Meadow Gold Dairies (Meadow Gold). Meadow Gold is a dairy

processor regulated in the Western order. Because this decision eliminates the PBTH provision from the Western order, amending the provision is rendered moot.

Two companion proposals to Proposal 11, also offered by Meadow Gold, published in the hearing notice as Proposals 12 and 13, should not be adopted. Proposals 12 and 13 offer language for the Western order to address payment obligation changes which would arise from modifying the PBTH provision. Because the PBTH provision is eliminated from the order, the need for these proposals are also rendered moot.

Similarly, another proposal, published in the hearing notice as Proposal 14, offered by the Market Administrator to provide additional clarity to the PBTH definition, is not adopted. The need to provide additional clarity to a provision that is being eliminated is also rendered moot.

A witness representing Meadow Gold viewed Proposals 11 and 13 as a remedy to the alternative to removing the PBTH provision and Proposal 12 as ensuring that pool plants must pay PBTH's at least the order's minimum class prices. According to the Meadow Gold witness, their major concern with the PBTH provision is that plants buying from a PBTH are not required to pay minimum class prices. Proposals 11 and 13 would ensure that milk is considered producer milk at the pool plant and that the pool plant is responsible for accounting to the pool and paying producers, the witness said. This would give the MA authority to verify payment to the Producer-Settlement Fund and to the producers supplying the PBTH, the witness said.

The witness maintained that the AMAA provides authority for the Secretary to ensure that handlers are paying minimum class prices for their milk purchases. The witness indicated that Meadow Gold would not object to removing the PBTH provision if the Department determined that the problems arising from the provision would be more appropriately remedied by its removal from the order.

A witness representing NDA, testified that while NDA understood the current problems regarding the PBTH provision, they had yet to determine their position on Proposals 11 through 13. However, in their post-hearing brief, NDA expressed support of Proposals 11, 12 and 13. They acknowledged that Proposals 11 and 13 are presented as a "package" and viewed Proposal 12 as an alternative. NDA asserted that they had no preference as to which approach should be adopted and expressed

confidence in the Department for rendering its decision on how best to address the PBTH issue.

A witness representing DFA testified that while they support evidence presented in support of Proposals 11 through 13, DFA believed that removal of the PBTH provision was a more appropriate course of action.

Witnesses representing Glanbia, Davisco, and Stoker testified in opposition to Proposal 11. The witnesses stated that they could not support this proposal because it would essentially regulate transactions between one type of handler to another while leaving other similar transactions such as bulk transfers, packaged milk transfers, custom bottling, tolling arrangements, and pooling fees untouched. The Davisco witness was also of the opinion that the AMAA does not grant the Secretary authority to regulate handler-to-handler transactions. The Stoker witness opposed Proposals 11 through 13 for the same reasons given in opposing the removal of the PBTH provision.

The witness representing NDA supported Proposal 14, stating that they were of the opinion that the Market Administrator's proposal would assist in the interpretation and administration of the order.

The pooling standards of all milk marketing orders 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 the milk of those producers who are reasonably associated with the market as a condition for receiving the order's blend price. The pooling standards of the Western order are represented in the *Pool Plant*, *Producer*, *Proprietary bulk tank handler*, and the *Producer milk* provisions of the order. Taken as a whole, these provisions are intended to ensure that an adequate supply of milk is available to meet the Class I needs of the market. In addition, these provisions provide the criteria for identifying those producers whose milk is reasonably associated with the market and thereby share in the marketwide distribution of proceeds arising primarily from Class I sales. Pooling standards of the Western order are based on performance, specifying standards that, if met, qualify a producer, the milk of a producer, or a plant to share in the benefits arising from the classified pricing of milk.

Pooling standards that are performance-based provide the only viable method for determining those eligible to share in the marketwide pool. This is because it is the added value from the Class I use of milk that adds