

additional income, and it is reasonable to expect that only those producers who consistently bear the costs of supplying the market's fluid needs should be the ones to share in the distribution of pool proceeds. Pooling standards are also needed to identify the milk of those producers who are providing service in meeting the Class I needs of the market. If the pooling provisions do not reasonably accomplish these aims, the proceeds that accrue to the marketwide pool from fluid milk sales are not properly shared with the appropriate producers. The result is the unwarranted lowering of returns to those producers who actually incur the costs of servicing and supplying the fluid needs of the market.

Similarly, pooling standards should provide for those features and accommodations that reflect the needs of proprietary handlers and cooperatives in providing the market with milk and dairy products. When the use of a pooling feature provision deviates from its intended purpose and gives rise to conditions that are contrary to the objectives of classified pricing and marketwide pooling as articulated in the AMAA, it is appropriate to re-examine the need for continuing to provide that feature as a necessary component of the pooling standards of the order. Because one of the objectives of classified pricing is assuring that all similarly situated handlers regulated under the terms of an order pay the same classified use-value, a pooling feature which can be used to circumvent this objective should be considered as inappropriate for inclusion in the order.

The Final Decision of Federal milk order reform examined and discussed the various pooling standards and features of the pre-reform orders for their applicability in new and larger consolidated milk orders. The pooling standards and features adopted for the consolidated Western Order were designed to reflect and retain those standards and features of the pre-reform orders so as not to cause a significant change and indeed to provide for the continued pooling of milk that had been pooled by those market participants.

The record provides evidence to conclude that a performance standard feature for supply plants is needed. Additionally, a pooling feature in defining producer milk is also needed to provide an appropriate limit on diversions by distributing plants. The lack of adequately defining how much milk a distributing plant can divert contributes to the inappropriate pooling of milk through the diversion process. Some milk being pooled under the Western order by diversion is not an

integral reserve supply of the distributing plant diverting milk. These inadequacies inappropriately pool milk classified at lower-valued uses which results in an unwarranted lowering of the blend price to those producers whose milk actually and consistently demonstrates service to the Class I needs of the market.

The record evidence also provides strong evidence that the *Proprietary bulk tank handler* provision gives rise to disorderly marketing conditions because the order is unable to establish minimum prices that are uniform among regulated handlers, a requirement of Section 608c(5) of the AMAA. The record clearly reveals that this pooling feature of the Western order is being used as a means to pool milk that could not otherwise be pooled and allows for the sale of milk for Class I use below the order's minimum Class I price. While this provision served its purpose in the pre-reform Southwest Idaho-Eastern Oregon order, its purpose and usefulness for the larger consolidated Western order can no longer be justified.

This decision finds that some milk is being pooled and is receiving the benefit of the Western order blend price without demonstrating actual and consistent service in supplying the Class I needs of the Western milk marketing area. This finding is attributed to inadequate pooling standard features needed to accomplish the intent of the order's pooling standards. The pooling provisions provided in the Final Decision of milk order reform established pooling standards and pooling features that envisioned the needs of the market participants resulting from the consolidation of two pre-reform milk marketing areas to form the current Western milk marketing area. The milk order reform Final Decision did not intend or envision that the pooling standards and pooling features adopted would result in the sharing of Class I revenues with those persons, or the milk of those persons, who would not be demonstrating a measure of service in fulfilling the Class I needs of the Western marketing area. The reform Final Decision also did not envision that the PBTH provision, carried into the consolidated Western order from the pre-reform Southwestern Idaho-Eastern Oregon order, would enable entities to sell milk for fluid use below the order's minimum Class I price.

The Final Decision of milk order reform examined and discussed various pooling standards and features of the pre-reform orders for applicability in a new, larger consolidated milk order. The pooling standards and features

adopted for the Western order were intended to reflect and retain those standards and features of the pre-reform orders so as to not cause a significant change, and indeed to provide for the continued pooling of milk that had been pooled by market participants. The 35 percent shipping standard for supply plants adopted as part of milk order reform was slightly higher than that of the Southwestern Idaho-Eastern Oregon order and was slightly lower than that provided for in the Great Basin order. Nevertheless, the adopted 35 percent standard was intended to result in no milk losing its association in the larger consolidated order due to a change in a regulatory provision.

With regard to producer milk, the Final Decision of milk order reform established a limit for producer milk diversions to nonpool plants at 90 percent. This standard is identical to the diversion limit then applicable in the Southwestern Idaho-Eastern Oregon order, but is higher than the applicable standards of 75 percent for cooperatives and 70 percent for proprietary handlers in the Great Basin order. The 90 percent standard was determined to be appropriate for the consolidated Western order because it would permit all milk then associated with the market that was not needed at pool plants to continue to be pooled and priced under the order. The 90 percent standard was also adopted because it was envisioned that it would provide handlers more flexibility to efficiently move milk and not preclude most producers associated with either the Great Basin or Southwestern Idaho-Eastern Oregon orders from having their milk pooled in the new consolidated order.

This decision agrees with DFA and those who expressed support for adopting Proposals 3 and 7. The record reveals that because the Western order does not account for milk deliveries from supply plants to distributing plants on a net basis, more milk is being pooled on the order through the diversion process than can be considered a integral reserve supply of distributing plants. The act of physically receiving milk certainly demonstrates performance in supplying the fluid needs of the market. However, by pumping the same amount, or some portion of the milk physically received out of a distributing plant for other than Class I use, undermines the intent and importance of the performance standard. In practice, the unloading and reloading of milk creates an artificial base for pooling additional milk that cannot otherwise meet the specified performance standards.