

Similarly, a netting provision on producer milk diverted from distributing plants is also needed to properly identify the milk of those producers that actually supply the marketing area's fluid needs. A "net diversions" provision is warranted for inclusion as part of the *Producer milk* definition of the order because the current diversion limit standard of the order does not properly limit the amount of milk that can be pooled by distributing plants. The diversion limit standard as it relates to supply plants is based on receipts. For supply plants, diverted milk is a component of the total receipts of the plant. For distributing plants, however, the pooling basis is determined by the amount of milk physically received. If a supply plant delivery no longer becomes a pool-qualifying shipment because shipments are determined on a net basis, then that milk should not be considered as physically received by the distributing plant and should therefore not be included as part of the basis for calculating the amount of milk that can be diverted from the distributing plant.

This decision finds that the adoption of Proposals 3 and 7 is warranted. Milk deliveries to distributing plants will be limited to milk transferred or diverted and physically received by distributing pool plants, less any transfers or diversions of bulk fluid milk products from the distributing plant. Relying on net shipments and net diversions for determining pool qualifying deliveries to distributing plants strengthens the principle of performance in supplying the Class I needs of the market as a condition for pooling diverted milk. Determining shipments and diversions on a net basis should also more appropriately identify the milk of those producers that should share in the distribution of Class I revenue by receipt of the order's blend price.

The record evidence does not support increasing the cooperative supply plant performance standard above the current 35 percent of receipts as sought in Proposal 4. The proposal is presented on the assumption that this decision would lower the diversion limit standard to 70 percent, and that in doing so, may cause entities to seek this special pool plant status. This proposal is rejected on the basis that the record does not reveal why this standard should be different from the "regular" supply plant standard. Additionally, speculation of how entities may choose to pool milk on the order is not, in the context of proposing a change in this performance standard, an appropriate basis upon which to make a change.

Providing for the diversion of milk is a desirable and needed feature of an order because it facilitates the orderly and efficient disposition of milk not needed for fluid use. When producer milk is not needed by the market for Class I use, some provision should be made for milk to be diverted to nonpool plants for use in manufactured products and still be pooled and priced under the order. Additionally, it is also necessary to safeguard against excessive milk supplies becoming associated with the market through the diversion process.

In the context of this proceeding, milk diverted by distributing plants is milk not physically received at the plants. While diverted milk is not physically received, it is nevertheless an integral part of the milk supply of the diverting distributing plant. If such milk is not part of the integral supply of the diverting plant, then that milk should not be associated with the diverting plant and should not be pooled. Associating more milk than is actually part of the legitimate reserve supply of the diverting plant unnecessarily reduces the potential blend price paid to dairy farmers who service the market's Class I needs.

Diversion limit standards that are too high can open the door for pooling more milk on the market. The record does not support lowering the diversion limit below the current 90 percent standard. As explained above, the lack of a netting provision for diversions by distributing plants has resulted in the inappropriate pooling of milk on the Western order. In this regard, the record evidence cannot attribute more milk being pooled on the order because the diversion limit standard is too high.

These findings, together with the original intents of the order's pooling provisions, may be altered if marketing conditions warrant their adjustments. In this regard, the Western order provides the Market Administrator with the authority to make needed adjustments to the shipping and diversion limit standards of the order.

e. Establishing Pooling Standards for State-Units

Two Proposals, published in the hearing notice as Proposals 2 and 9, seeking to establish pooling units organized and reported as "State-units" in the Pacific Northwest and Western milk orders respectively, should not be adopted. These proposals were offered by DFA. Specifically, the proposals would specify that milk from those States located outside of the States and counties that comprise the Western and Pacific Northwest marketing areas would be reported separately in units,

organized by the State from which the milk originates. Each State-unit would need to meet the performance standards applicable for supply plants as a condition for being pooled on the orders. Neither order currently provides separate pooling standards for milk located outside of each respective marketing area.

The DFA witness explained that Proposals 2 and 9 address broader pooling issues by establishing reasonable performance standards for milk located outside of market areas and do not just simply prohibit the practice of double dipping as discussed earlier in this decision. In this regard, the witness indicated that Proposals 2 and 9 are offered to address the pooling of large volumes of milk from locations distant from the Pacific Northwest and Western marketing areas. According to the witness, large volumes of milk are being pooled without meeting any reasonable measures of performance in serving the Class I needs of the market.

The DFA witness testified that since the implementation of milk order reform, organizations like DFA have made purposeful pooling decisions to maximize returns and have engaged in the practice of double dipping to accomplish this end. Nevertheless, the witness acknowledged that the practice of double dipping is unfair and should be corrected. The witness continued to explain that the impact of double dipping on an order's blend price paled in comparison to the blend price impact caused by inadequate pooling provisions that do not properly stress the importance of demonstrating performance in regularly and consistently supplying the Class I needs of a marketing area. Additionally, the witness expressed the opinion that the relationship between the Class I pricing surface and the pooling provisions was fundamentally changed as part of milk order reform. Specifically, the witness noted, the movement to a nationally coordinated Class I pricing structure that makes adjustments to the Class I differential level by county accounts for the changed relationship.

The DFA witness stressed that while the new Class I price structure has a relationship to the blend price paid to producers, the connection between milk value and the distance of milk from the market are not adequately linked. The disconnect is further aggravated by the adoption of faulty pooling standards that run counter to three key criteria used during milk order reform in establishing the Class I price structure, the witness asserted. The three key criteria include, the witness said, sending appropriate marketing signals,