

plant regulated by the Central order, testified that they were no longer able to source milk from their usual milksheds in southern Missouri and central Illinois. This witness stated that until recently, they had to rely on contracts with southern milk sources at premium prices to obtain a supply of milk because milk supplies were not available locally.

The DFA, *et al.*, witness testified that the order's supply plant performance standards should continue to be adjusted seasonally but at slightly different times. According to the witness, a higher standard of performance is needed for the months of August through November because increased customer demand occurs in those months. More importantly, the witness indicated that performance should be specified for every month of the year. In this regard, the witness from Prairie Farms added that specifying August through November for increased performance would help to ease their need to obtain additional milk supplies from other marketing areas.

Using milk located within the marketing area to qualify milk for pooling at plants located far from the marketing area was described by the DFA, *et al.*, witness as "pyramiding." The witness also attributed pyramiding to inadequate performance standards. As an illustration, the witness provided evidence to show how pooling provisions permit the pooling of milk volumes that cannot reasonably demonstrate performance in serving the Class I needs of the Central marketing area. As an example, the witness explained how a single tanker load of milk delivered to a pool plant within the Central order marketing area can qualify as many as 15 additional tanker loads of milk for pooling on the order through diversions. The witness contended that the ability to pyramid milk for pooling in this way reveals the inadequacy of the current pooling standards. Eliminating the ability to pyramid milk for pooling, the witness stressed, provides a basis for lowering the order's supply plant performance standard.

The DFA, *et al.*, witness testified that supply plants delivering milk to distributing plants not regulated by the Central milk order should not be counted in determining if the Central order's performance standards have been met. The witness indicated that such milk does not serve the Class I needs of the Central order. The witness offered that standards allowing for pool qualification to be earned from shipments to another order's distributing plants stem from pre-reform

pooling provisions that were generally associated with "reserve supply" orders where Class I use was relatively small. The witness contended that the consolidated Central order is not such an order. While deliveries of milk to another order could still occur, noted the witness, the deliveries should not count toward pool qualification.

The witness from DFA, *et al.*, also offered a modification to Proposal 1 for incorporating a "net shipments" feature for pool supply plants as a way to ensure that fluid milk was actually received and retained at a distributing plant for Class I use. According to the witness, this feature would prevent a supply plant from physically shipping milk into the facilities of a distributing plant only to have the milk reloaded and moved to another plant for uses other than Class I. The witness also noted that without a "net shipments" provision, suppliers could qualify milk for pooling on the Central order without that milk ever being available to service the Class I needs of the market.

The witnesses from A-E concurred with the need for a "net shipments" provision, as did a witness from Foremost Farms, USA, a cooperative whose plants were regulated under the Central and Upper Midwest milk marketing orders. A witness from Suiza, testified that while they did not oppose a "net shipments" provision, they were of the view that milk actually delivered to a distributing plant was performing a service to the Class I needs of the market. To the extent that the same milk is subsequently pumped back out of the plant, indicated the witness, that decision is made by the receiving handler. Therefore, concluded the Suiza witness, such milk should be counted in determining if the supply plant performance standard is being met.

Briefs from both A-E and Dean Foods¹ reaffirmed their opposition to the inclusion of supply plant shipments to distributing plant unit plants as counting towards meeting pool qualifying performance standards noting that a relatively large non-Class I volume of milk is often associated with distributing plant units. The briefs contended that pooling stand-alone Class II operations could result in placing pooling priority for milk used in Class II dairy products on a par with milk used for Class I. They viewed that adoption of expanding supply plant qualifying deliveries to distributing plant units would create inequities and

perhaps even result in creating new disorderly marketing conditions.

Exceptions to the tentative final decision from A-E and Dean Foods agreed that the decision adequately and appropriately addressed the disorderly conditions raised by them and others in the record.

A group of cooperative associations with members located primarily in the Upper Midwest milk marketing area opposed amendments included in Proposal 1 because it was their view that the amendments would limit their ability to pool milk on the Central order. The cooperative associations included: Associated Milk Producers, Inc. (AMPI); Foremost Farms, USA (Foremost); Land O'Lakes (LOL); First District Association (FDA); Family Dairies USA (Family Dairies); and Lakeshore Federated Dairy Cooperative (Lakeshore), comprised of Midwest Dairymen's (Midwest Dairymen) Company, Manitowoc Milk Producers Cooperative, and Milwaukee Cooperative Milk Producers. Hereinafter this decision will collectively refer to this group of cooperative associations as the "Upper Midwest Cooperatives."

Testimony by the Upper Midwest Cooperatives² witnesses argued that the adoption of more restrictive pooling standards would force milk that currently is pooled on the Central order to be pooled instead with the Upper Midwest pool. According to the witnesses, this would result in lower blend prices to Upper Midwest producers because of the lower Class I use in that area. The witnesses also argued that adopting the amendments contained in Proposal 1 would establish the more stringent pooling provisions that were in effect prior to milk order reform. According to the witnesses, this would establish a barrier to pooling the milk of producers who had long been associated with the markets merged to form the Central order.

To illustrate their point that the amendments of Proposal 1 would limit their ability to pool milk on the Central order, an Upper Midwest Cooperatives' witness testified that under current pooling provisions, every pound of milk delivered to Central order pool distributing plants provides the ability to pool 15 additional pounds of milk. If the pooling provisions proposed are adopted, the witnesses indicated that only 3 additional pounds of milk could be pooled for each pound of milk delivered on the Central order.

The Foremost witness, testifying on behalf of AMPI, LOL, Family Dairies, Midwest Dairymen, and FDA, testified that if Proposals 1 and 5 (Proposal 5 is discussed in more detail later in this decision) were adopted, and if they

¹ Suiza Foods Corporation merged with Dean Foods Company on December 21, 2001, at which time the name of the merged company became Dean Foods Company.