

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 additional revenue from the Class I use of milk that adds 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. Pool plant standards—specifically standards that provide for the pooling of milk through supply plants—also need to reflect the supply and demand conditions of the marketing area. This is important because producers whose milk is pooled receive the market's blend price.

Similarly, supply plant 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 a pooling feature's use deviates from its intended purpose, and its use results in pooling milk that cannot reasonably be determined as serving the fluid needs of the market, 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 pooling standards is ensuring an adequate supply of fluid milk for the market, a feature which results in pooling milk on the order that does not provide such service should be considered as unnecessary for that marketing area.

Pooling standards are needed to identify the milk of those producers who are providing service in meeting the Class I needs of the market. If a pooling provision does not reasonably accomplish this end, 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 of those producers who actually incur the costs of servicing and supplying the fluid needs of the market.

The post-hearing brief received from the Upper Midwest Cooperatives continued to stress opposition to the amendments offered by Proposals 1 (and Proposals) 3, 5, and 7. They view that such changes to the Central milk marketing order are discriminatory and that the proposed amendments would foster inefficiencies in milk marketing. The brief re-iterated their view that the Department's policy has been to design plant and producer pooling provisions that provide a regulatory balance

between the fluid needs of the market and transportation efficiency to meet those needs. In this regard, the brief stressed the opinion that orderly marketing is promoted by not requiring shipments to distributing plants when such shipments are not needed for fluid uses. Additionally, the brief asserts that the Department has long recognized that excluding milk from the pool under rigid performance rules is a greater threat to orderly marketing in surplus marketing areas than is the pooling of surplus milk supplies.

The Upper Midwest Cooperatives' brief added that marketwide pooling has been determined as a constitutional means for surplus Grade A milk to share in the additional revenue resulting from fluid sales. Additionally, the brief noted that the 43-day national hearing review and reform proceeding of 1990—and the Second Amplified Decision of 1996 of that proceeding—articulate the policy of the Department to allow milk to shift to different markets in response to blend price changes. The brief also cited case law to maintain that the statutory scheme for promoting orderly marketing is the sharing of proceeds among producers in the form of uniform, or blend, prices. The opinion expressed in the Upper Midwest brief cites that case law has concluded that producer blend prices cannot be thwarted by a discriminatory transportation burden imposed on distant producers by government mandate.

The Upper Midwest Cooperatives objected to the tentative final decision, as restricting the amount of pooled milk on the Central Marketing order by mechanisms such as committed and controlled supplies from established producer organizations. The Upper Midwest Cooperatives continued by stating that the decision would eliminate much "out-of-area" milk from the pool and would also exclude Grade A milk produced inside the Central order.

The record of this proceeding clearly supports a finding that certain features of pooling standards of the Central Order established under the Federal order reform process, especially as they relate to supply plants, were either inadequate or unnecessary and that the Department was justified in adopting the interim rule. The Final Decision of milk order reform examined and discussed the various pooling standards and features of the pre-reform orders for their applicability in a new, larger consolidated milk order. The pooling standards and features adopted for the consolidated Central 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.

As noted in the tentative decision, the record provides strong evidence to conclude that several features of the *Pool plant* definition, specifically the provisions and features for supply plants, were not being used for the reasons they were intended. Other shortcomings of the Central order, specifically as they relate to producer milk (discussed later in this decision) also have contributed to the inappropriate pooling of the milk of producers who are not a legitimate part of the Central milk marketing area. Here too the impact has been an unwarranted pooling of milk classed at lower prices resulting in a lower blend price to those producers who actually and consistently supply the Class I needs of the market.

The tentative decision and this final decision find that the milk of some producers was benefitting from the blend price of the Central order while not demonstrating actual and consistent service in satisfying the Class I needs of the Central milk marketing area. This finding was attributed to improper and inadequate features of the 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 nine pre-reform milk marketing areas consolidated to form the current Central milk marketing area. The reform Final Decision, as it related to the Central marketing area, 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 providing the Class I needs of the Central marketing area.

The reform Final Decision examined and discussed various pooling standards and features of the pre-reform orders for applicability in new, larger consolidated milk orders. The pooling standards and features adopted for the Central 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 pooling provisions of the Central order were based largely on the predecessor Iowa milk marketing order (then known as Order 79). The Iowa order contained the more liberal pooling provisions of the nine orders consolidated to form the