

Central order. The record of this proceeding reveals that the combination and features adopted for pool plants, especially as they apply to pool supply plants, have not been reasonable or appropriate standards for the much larger consolidated Central order.

The record of this proceeding reveals that two-thirds of the Central marketing area population (and corresponding demand for fluid milk) is located in the southern and western portions of the marketing area. However, the adoption of the Central order pooling provisions did not anticipate that the adopted pooling standards would not adequately consider the impact on the northern Central marketing area resulting from the Arkansas and southern Missouri portions of the pre-reform Southwest Plains marketing area becoming part of the current Southeast marketing area. Milk produced in these regions had been regularly pooled on the Southeast milk order prior to the expansion of the Southeast order as part of milk order reform and is an integral part of the current Southeast marketing area milkshed. Changes in marketing conditions, as revealed in the record, have resulted from the pooling standards existing prior to the interim rule as an important factor in explaining why fluid handlers in the southern reaches of the Central order have had difficulties obtaining a supply of milk.

As previously indicated, pooling milk on the Central order without demonstrating actual performance in servicing the Class I needs of the market area is neither appropriate nor intended. The record indicates that the volume of milk pooled on the Central Order originating from sources far outside the marketing areas of the nine predecessor marketing areas increased by 186 percent when comparing, for example, the pre-reform month of December 1998 with the post-reform month of December 2000. Of the increase shown in this comparison, milk pooled on the order and originating within the marketing area increased by only 10 percent. Of the additional milk pooled on the Central order, the greatest increase is represented by milk priced at lower class prices. Additionally, testimony by Upper Midwest Cooperatives' witnesses clearly indicated that under the Central order's current pooling provisions, milk pooled on the Central order is not necessarily available to fill the Central market's fluid needs.

The tentative decision as well as this final decision agree with the proponents and those entities who expressed support for adopting Proposal 1 that the order's pooling standards warrant

changes. Both the tentative decision and this final decision find, however, that the performance standards of Proposal 1 are unreasonably high when considering the complete context of the pooling provision modifications made in this decision. If adopted as proposed, together with the other amendments adopted in this decision, milk that has had a long-established association in supplying those pre-reform marketing order areas consolidated to form the Central order may no longer be pooled on the Central order. Most of this milk originates from areas in the Upper Midwest marketing area. The performance standards sought in Proposal 1 may unintentionally compound the difficulties of Central order distributing plants in securing needed milk supplies that could be made available if not for unreasonably high performance standards. Accordingly, this final decision proposes to adopt on a permanent basis the following amendments to the pooling standards and features of the order that were adopted in the interim final rule:

1. Performance standards for supply plants are reduced to (1) 20 percent in each of the months of August through February and (2) 15 percent in each of the months of March through July. Lower supply plant shipping performance standards are established because of accompanying adjustments to the order's other pooling provisions and features. Lowering supply plant performance standards also addresses the concern by Upper Midwest Cooperatives that a "tightening" of the order's performance standards would erect an unreasonable barrier in supplying to, and to pooling milk on, the Central order. As noted in the tentative decision, it should also be emphasized in this final decision that, to the extent that the supply plant performance standards may warrant further refinement, the order provides the means for initiating a change by providing authority for the Market Administrator to consider and make needed changes.

Given that performance standards are specified in every month, the need to continue with the automatic pool plant feature for supply plants during the 3-month period of May through July is rendered unnecessary and contrary to establishing such standards of performance in the first place. The adoption of year-round performance standards, adjusted seasonally, will better assure that a consistent and reliable supply of milk will be provided to the fluid market throughout the year.

August should be included for those months in which a higher performance standard is warranted. Including August in the higher performance months is supported by record evidence which reveals August as the beginning of seasonal increased demand due to the opening of schools occurring at the same time as a general overall decline in milk supplies.

2. As in the tentative decision, this final decision would eliminate a handler's ability to qualify plants located outside the marketing area by cooperative handlers (as defined in § 1000.9(c)) or diversions from a pool plant of the Central order to another pool plant of the Central order. The record supports a finding that milk pooled in this manner does not actually demonstrate real service in meeting the Class I needs of the Central marketing area. Milk pooled in this manner was often referred to in record testimony as "pyramiding." No reasonable basis can be found in the record evidence to conclude that milk pooled in this manner warrants receiving the Central order blend price. The record can only support concluding that milk pooled in this manner serves to lower the blend price paid to producers who actually do supply the market's Class I needs.

3. The tentative decision and this final decision find that shipments of milk to distributing plants regulated by another Federal milk marketing order should not be considered in determining if a supply plant meets the specified performance standard of the Central order for pooling. The performance standards proposed to be adopted by this decision for the Central order are designed so that its distributing plants are adequately supplied with milk. Milk shipments to distributing plants regulated by another Federal order only serve the Class I needs of that other order. Pooling standards for the Central marketing area provide the criteria for determining the milk of those producers who are serving the Class I needs of the Central marketing area and who would thereby receive the Central order blend price. It is reasonable in light of this objective to conclude that serving the needs of another market is not providing a service to the Central marketing area. Accordingly, such milk should not be considered as a qualifying shipment for meeting the supply plant performance standards of the Central order.

4. The tentative decision and this final decision find that the modification of Proposal 1 offered by DFA to limit pool qualifying deliveries to distributing plants on a "net shipments" basis is warranted. Milk deliveries to