

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 for determining pool qualifying deliveries to distributing plants is applicable to both supply plant deliveries and milk moved to distributing plants directly from the farms of producers. Adoption of this feature will help ensure that milk not serving the market's Class I needs will not be counted towards meeting the specified performance standard.

Providing a net shipments feature for the Central order is reasonable and will likely not be burdensome despite opposition to its adoption. Even with the inappropriate pooling of milk on the order, lower supply plant performance standards adopted in the tentative decision and this final decision are at levels below the Central market's Class I use of milk. While distributing plants do have some transfers and diversions of milk resulting from variations in demand arising from changing fluid milk needs on weekend days and holidays, the tentative decision and this final decision find it is doubtful that the magnitude of these transfers and diversions would be such that a supply plant would risk loss of pool plant status. Additionally, other changes to the order's pooling standards continuing to be adopted in this decision (discussed below) would provide the necessary safeguards that would make it even more unlikely that a supply plant would lose its pool status. This final decision continues to find that adoption of a net shipments feature in the pooling standards of the Central order also would aid in properly identifying the milk of those producers who actually supply milk to meet the Central marketing area's fluid needs.

#### b. Cooperative Supply Plant Performance Standards

A cooperative supply plant pooling provision, together with the feature of authorizing the market administrator to adjust the performance standards for cooperative supply plants, should be retained as suggested in the tentative decision. It was unclear at the time the tentative decision was issued whether Proposals 2 and 4, seeking removal of the cooperative supply plant performance standard and the corresponding provision authorizing the market administrator to adjust those standards, should be adopted in the tentative decision. Because the evidence in the record did not support the removal of these provisions and because

there were no additional persuasive comments on this subject in response to the tentative decision, the Department has not proposed adopting these proposals in this final decision.

The Central marketing order provides for a cooperative association plant as a type of supply plant on the order provided the cooperative association's plant is located within the marketing area and that at least 35 percent of the milk which the cooperative association handles is shipped to a Central order distributing plant during any current month or in the immediately preceding 12-month period. In addition, the provision requires that the cooperative association plant not qualify as a distributing or supply plant under the Central order or any other Federal milk marketing order.

The DFA, *et al.*, witness stated that adoption of some of the other proposals considered in this proceeding, such as modifying supply plant performance standards and providing for net shipments and a one-time "touch base" standard, makes retaining this provision unnecessary. The witness also testified that the provision has not been used since implementation of the consolidated Central order.

Elimination of the provision was supported in testimony by witnesses representing both A-E and Suiza Foods. Both witnesses stated that the provision is unnecessary and is not being used. In their post-hearing briefs, both A-E and Dean Foods reiterated that no plant is presently qualified under the cooperative supply plant definition.

Although there was no opposition testimony to the removal of the cooperative supply plant provision in the Central Order, both the tentative decision and this final decision find that this provision and the corresponding provision authorizing the market administrator to make needed adjustments should be retained. The testimony contained in the record does not contain sufficient reason for a finding to eliminate this standard other than it is a provision that is not used. The provision allows pool qualification for cooperative supply plants on either an average of the preceding 12-month's shipments or the current month's shipments and provides pooling flexibility for cooperatives. The cooperative supply plant definition contains features that are unique and intentional. While the proponents and supporters of Proposals 2 and 4 testified that the cooperative supply plant provision is not currently being used, testimony received did not address the apparently diminished importance of this pooling provision that was used in

four of the nine pre-reform milk orders consolidated to form the Central order. The provision also is a pooling feature provided in most other Federal orders and, as with the Central order, is not currently being used in most of the other Federal orders containing this provision. Given the current record, removing this provision from the Central order may result in the unintended removal of a pooling provision intended for cooperative associations that may be needed at some future time. Accordingly, this final decision does not adopt Proposals 2 and 4.

#### c. Supply Plant System Standards

Proposal 3 of the hearing notice seeking to increase the performance standards for a system of supply plants—and modified at the hearing to limit supply plant system formation to single handler entities instead of currently allowing such systems to be formed by multiple handlers—was not adopted in the tentative decision and is not proposed to be adopted in this final decision. As previously discussed, the record contains evidence that distributing plants regulated by the Central milk order are having difficulty obtaining an adequate supply of milk for fluid use. While this proposal's aim is, in part, to address this problem, there nevertheless remains the potential for a supply plant system to pool milk supplies that may not demonstrate actual service to the fluid needs of the Central marketing area. The modification of the proposal seeking to limit supply plant system formation to a single handler entity has merit. However, taking into account the current record and the fact that there were no exceptions to the tentative decision on this issue, it is not adopted as a modification to the order's current system pooling provision in this final decision. It is noted that the hearing testimony often referred to supply plant systems as "supply plant units." Nevertheless, it is clear that hearing participants intended to mean "supply plant systems" and, accordingly, this final decision continues to consider the testimony in the context intended.

The supply plant system provisions of the Central order currently provide that a system of supply plants may qualify for pooling if 2 or more plants operated by one or more handlers meet the applicable performance standards established for a supply plant. A supply plant system would qualify to pool all of its milk receipts, including diversions, by meeting a performance standard of 25 percent in each of the months of September through November