

Prior to the adoption of the interim final rule, the *Producer milk* provision of the Central order provided for diversion limits of 65 percent during the months of September through November and January and limits of 75 percent during the months of February through April and December. While the Central order limits the pooling eligibility of diverted milk to nonpool plants in specified months, the order placed no limits on milk diversions to other pool supply plants of the order. Milk diverted from one pool plant to another pool plant enabled the diverting pool plant to increase the amount of milk that could be pooled but diverted to nonpool plants. During the months of May through August, an unlimited amount of producer milk could be diverted by pool plants to nonpool plants. The milk of a producer was not eligible for diversion until at least one day's production of a dairy farmer was physically received at a pool plant and the producer continually retained producer status on the Central order both before and after adoption of the interim rule. Finally, the order did not determine producer milk on a net-shipments basis until adoption of the interim rule.

Proposal No. 5, offered by DFA, *et al.*, seeks to establish new year-round diversion limits for producer milk at 75 percent for each of the months of August through November and at 80 percent for each of the months of December through July. These limits are subject to satisfying certain performance measures and would specify that at least 20 percent of receipts in each of the months of August through February and 15 percent in each month of all other months are delivered to Central order distributing plants. Because year-round diversion limits would be established for all months, the proposal is intended to eliminate the ability to pool an unlimited amount of milk on the order during May through August by diversion. As noted in the discussion of supply plant performance requirements earlier, DFA, *et al.*, repeated their argument for these diversion limits in their exceptions to the tentative decision.

Proposal 5, offered by DFA, *et al.*, was modified in testimony by the DFA witness. The modification proposed sought also to incorporate a net-shipments feature for producer milk as they had proposed as a modification to Proposal 1. According to the witness, the net-shipments feature would be used to determine pool-qualifying diverted milk on the basis of milk receipts transferred or diverted to and physically received by Central order

distributing plants less any transfers or diversions of milk from such distributing plants. In exceptions to the tentative decision, DFA, *et al.*, stated that the net shipment provision for producer milk is at least as important as it is for supply plant milk.

The DFA, *et al.*, witness testified that the core issues of the hearing are restoring orderly marketing conditions and economically justifying the appropriate performance standards that, if met, warrant receiving the Central Order blend price. The witness explained that orderly marketing embodies the principles of common terms and pricing that attracts milk to move to the highest-valued use when needed and for milk to clear the market when not needed in higher-valued uses. The DFA witness was of the opinion that the percentage of allowable diversions should be increased over those currently applicable in the Central order. The witness indicated that this becomes possible with the adoption of the other pooling provision amendments, including changing performance standards and considering milk deliveries to distributing plants on a net shipments basis.

The DFA, *et al.*, witness testified that the Central order should provide a limit on the amount of milk that can be diverted to nonpool plants each month by conditioning diversions on the basis of milk shipments to pool distributing plants or distributing plant units of the Central order. The witness stated that the aim of these features is to provide a better correlation between the order's pooling provision standards.

A witness representing several fluid milk processing plants joined in expressing their support for adopting year-round diversion limits. They were of the opinion that this would enhance pooling the milk of only those who provide an adequate supply of milk for fluid uses.

Witnesses representing the Upper Midwest cooperatives testified in opposition to the adoption of Proposal 5 and to the proposal's modification to incorporate a net-shipments feature. In their opinion, these changes would unnecessarily limit the amount of milk that could be pooled on the Central order. The witnesses indicated that this would force surplus milk supplies to be pooled instead on the Upper Midwest order. As a result, they testified, the Upper Midwest pool would be diluted and result in a lower blend price for their producers in the Upper Midwest.

A witness for the First District Association testified that diversion limits are not always needed for every month. The witness maintained that

having year-round diversion limits would reduce competition and result in lower milk prices for producers of the Central marketing area. The witness argued that diversion limits should be provided only for ensuring the orderly marketing of fluid milk but should not be used so as to constitute a barrier to pooling milk.

In their exceptions to the tentative decision, the Upper Midwest Cooperatives reiterated their opposition to the addition of a net shipments provision and the limitation on diversions to only distributing plants, not milk received by any pool plant. They stated that this provision would eliminate a large amount of the milk that does not have a committed share of the Class I market. These cooperatives believe this unfairly allows nearby suppliers to accrue a higher blend.

The Central milk order, as all other Federal milk marketing orders, provides and accommodates for diverting milk because it facilitates the orderly and efficient disposition of the market's milk not needed for fluid use without the loss of the benefits that arise from being pooled on the order. When producer milk is not needed by the market for Class I use, its movement to nonpool plants for manufacturing should be provided for without loss of producer milk status. Preventing or minimizing the inefficient movement of milk solely for pooling purposes also needs to be reasonably accommodated. However, it is just as necessary to safeguard against excessive milk supplies becoming associated with the market through the diversion process.

A diversion limit establishes the amount of producer milk that may be an integral milk supply of a pool plant. With regard to the pooling issues of the Central order, the tentative decision as well as this final decision stress that it is the lack of diversion limits to nonpool plants, in part, that significantly contributes to the pooling of much more milk on the order that does not provide service to the Class I market yet receives the Central order blend price. Such milk is not a legitimate part of the reserve supply of the plant.

According to the tentative decision and this final decision, milk diverted to nonpool plants is milk not physically received at a pool plant. However, it is included as a part of the total producer milk receipts of the diverting plant. While diverted milk is not physically received at the diverting plant, it is nevertheless an integral part of the milk supply of that 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