

plant. Therefore, such milk should not be pooled.

Both the tentative decision and this final decision state that the lack of diversion limits only provides a means for associating much more milk with the market without the burden of demonstrating actual service in meeting the Class I needs of the market.

Associating more milk than is actually part of the legitimate reserve supply of the diverting plant unnecessarily reduces the potential blend price paid to dairy farmers. Without diversion limits, the order's ability to provide for effective performance standards and orderly marketing is weakened.

The lack of diversion limit standards applicable to pool plants opens the door for pooling much more milk on the market. While the potential size of the pool should be established by the order's pooling standards, the lack of diversion limits renders the potential size of the pool as undefined. With respect to the marketing conditions of the Central marketing area evidenced by the record, both the tentative decision as well as this final decision find that the lack of year-round diversion limits on producer milk has caused much more milk to be pooled on the order than can reasonably be considered part of the legitimate reserve supplies of the pool plants and does not provide any actual service in meeting the Central market's Class I needs.

The lack of standards applicable for diversions to nonpool plants for the months of May through August prior to the interim rule resulted in the pooling of much more milk than can demonstrate any actual service in meeting the Class I needs of the Central marketing area. The diversion limit standards of Proposal 5 address this concern. However, the diversion limits adopted in the tentative decision and proposed to be adopted on a permanent basis by this final decision are higher than those proposed. Increasing the diversion limit standard is made possible because of other changes adopted in the tentative decision that would also be adopted in this final decision. The changes to the diversion limits standards adopted in the tentative decision are also proposed to be adopted in this final decision at a level to appropriately complement the performance standards. Accordingly, this decision proposes to establish a diversion limit for producer milk of 80 percent for each of the months of August through February and 85 percent for each of the months of March through July. In addition, the diversion limits may be adjusted by the Market Administrator.

As previously discussed, both the tentative decision and this final decision have determined that only deliveries or diversions to pool distributing plants, and not deliveries to pool supply plants, should be allowed to qualify subsequent supply plant diversions for pooling on the order. Such conditions are carried into the producer milk definition as a condition for diversion eligibility. It is also consistent, in light of such linkage, that a net shipments feature should be provided as part of the producer milk provision. However, as discussed earlier in the section on pooling standards, the evidence contained in the record does not support the inclusion of deliveries to pool distributing plant units to qualify supply plant diversions for pooling. Accordingly, this feature of Proposal 5 is not adopted.

A proposal, published in the hearing notice as Proposal 9, seeking to allow milk to be eligible for diversion to nonpool plants and for such milk to retain its association with the market for any months during which a handler failed to pool a dairy farmer's milk under any milk marketing order is not adopted. The tentative decision as well as this final decision find that a dairy farmer's milk must be physically received at a pool plant of the Central order before it is eligible for diversion to nonpool plants. Additionally, this final decision continues to find that if milk is not continuously pooled, it again must be received at a pool plant before regaining pooling eligibility.

The Central order currently specifies that the milk of a new producer, or a producer who has broken association with the market, is not eligible for diversion until one day's production is physically received at a pool plant in the first month, and the dairy farmer continuously retained producer status in following months. The dairy farmer's milk is associated with the market if it is included in the pool each month, except as a result of a temporary loss of Grade A approval.

Proposal 9 would allow milk diverted to a nonpool plant before the producer's milk is actually delivered to a pool plant in the same month to be considered producer milk. Proposal 9 also included a provision to allow the milk of a dairy farmer to retain its association with the market for any months during which the handler failed to pool the producer's milk under any order.

Proposal 9 was offered by the Upper Midwest Cooperatives. A witness from AMPI, testifying on behalf of the Upper Midwest Cooperatives, explained that Proposal 9 is needed to assure that producers' milk can be pooled for the

entire month as long as one day's production is physically received at a pool plant any day during the month. According to the witness, producers could miss several days of being able to pool milk on the Central order due to unexpected phenomena, such as weather, trucking problems, and scheduling conflicts.

According to the AMPI witness, Proposal 9 also would allow milk to return for pooling on the order in the month following the month in which it was not pooled because the blend price was less than the Class III or Class IV price. In this regard, the witness noted that the order currently provides for milk to be pooled at least one day each month before being eligible for diversion to nonpool plants regardless of whether it is economically sound to pool milk based on the blend price that would result for the month.

The touch base standard of an order establishes an initial association by the producer, and the milk of the producer, with the market. In this way, the touch base provision serves to maintain the integrity of the order's performance standards. The record does not contain sufficient evidence for setting conditions that negate the need to properly re-establish association with the market. Doing so is neither burdensome nor unreasonable considering that only one day's milk production of a dairy farmer needs to be delivered to a plant and pooled in order to maintain association with the market. Accordingly, Proposal 9 is not adopted.

#### e. Establishing Pooling Standards for "State Units"

A proposal, published in the hearing notice as Proposal 7, seeks to establish pooling units organized and reported by State, specifying that in order to pool milk from those States located outside of the States and specified counties that comprise the Central marketing area, each State unit would need to meet the performance standards applicable for pool supply plants. This proposal was not adopted in the tentative decision and is not adopted in this final rule. The Central order does not currently provide for pooling milk located outside of the marketing area in this manner.

Proposal 7, offered by Dairy Farmers of America (DFA), would group and report milk in State units and specify performance standards for such State units as those applicable to pool supply plants. The milk that would be affected would be milk located outside the States of Colorado, Illinois, Iowa, Kansas, Missouri, Nebraska, Oklahoma, and South Dakota, the Minnesota counties of Fillmore, Houston, Lincoln, Mower,