

Murray, Nobles, Olmstead, Pipestone, Rock, and Winona, and the Wisconsin counties of Crawford, Grant, Green, Iowa, Lafayette, Richland, and Vernon.

The DFA witness testified that milk is being pooled on the Central order that is located in areas so far from the marketing area that such milk cannot and does not service the Class I needs of the Central market. The witness argued that milk from such distant areas was never intended to be a source of milk or a part of the Central order milkshed. According to the witness, large portions of the States of Minnesota and Wisconsin, characterized as a "distant" source of milk, had not historically been part of the supply area for the pre-reform marketing areas consolidated to form the Central milk marketing area. DFA argued that milk from these areas should be subject to the same performance standards as milk from other distant areas such as California or New Mexico.

According to the DFA witness, distant milk currently pooled on the Central order likely would not seek to be pooled on the order because the benefits of receiving a higher blend price for milk actually delivered to Central order pool plants would not offset the costs that would be incurred in transporting milk. In attempting to clarify what would be determined as being not distant, the DFA witness offered a method to distinguish between historical and distant milk supplies. Milk from counties associated with the Central market's pre-reform orders, which in 1998 had a daily supply volume in excess of one 50,000 pound load, would be included with milk considered to be local or in-area and not distant milk.

The principal problem confronting the Central order, as identified by the DFA witness, is that the distant milk receives the order's blend price without the burden of providing any regular and consistent service to the market beyond meeting a one-day touch-base standard. The witness argued that their proposal would set standards for milk from distant areas identical to local milk as a condition for receiving the order's blend price. Providing for this would not, according to the witness, discriminate, penalize, or establish any barriers to the pooling of milk on the Central order because the standards for local milk supplies and distant milk supplies would be the same. Support was given in testimony for establishing State units by witnesses representing Prairie Farms and Suiza. In their exceptions to the tentative final decision, DFA, *et al.*, reiterated their support for requiring performance on a unit basis by out of area milk.

A number of hearing participants opposed the adoption of the State unit pooling proposal, specifically the witnesses representing Upper Midwest cooperative associations. The Foremost Farms witness argued that adoption of the proposal would discourage efficient movements of milk to distributing plants and that such a provision would be inconsistent with the Agricultural Marketing Agreement Act (AMAA). This witness questioned why an organization with milk in the Central marketing area should be required to transport milk from distant areas in Minnesota and Wisconsin when the same organizations already have enough milk in the marketing area to satisfy the order's pooling standards. The witness indicated that this could result in forcing milk located within the marketing area to be hauled long distances to make room for the receipt of milk from distant locations.

The AMPI witness agreed with the Foremost witness' testimony and the witness representing the First District Association, both of which asserted that adopting State unit pooling for distant milk would destroy the benefits of pooling milk on the Central order. They held this opinion because the differences between Class I use and blend prices between the Central and Upper Midwest orders would narrow.

In post-hearing briefs, the Upper Midwest Cooperatives continued to express opposition to DFA's Proposal 7 (and to Proposals 1, 3, and 5). They characterized their opposition as establishing barriers to pooling on the basis of where milk is located through government-mandated transportation costs. As indicated above on proposals affecting pool plants and producer milk, their brief cited case law to advance their contention that such amendments would not be legal.

The record does not support the adoption of performance standards for pooling milk on the order on the basis of its location or as the proponent and supporters of Proposal 7 describe as State units. The marketing conditions of the Central order do not exhibit the need to require additional performance standards for milk located outside of the marketing area beyond those adopted in the tentative decision and proposed to be adopted by this final decision. Accordingly, all plants, regardless of location, may become eligible to have the milk of producers pooled on the Central order by meeting the performance standards specified for the various types of pool plants.

It is not important who provides the milk for Class I use or from where this milk originates. The order boundaries of

the Central order were not intended to limit or define which producers, which milk of those producers, or which handlers could enjoy the benefits of being pooled on the Central order. What is important and fundamental to all Federal orders, including the Central order, is assuring an adequate supply of milk to meet the market's fluid needs, the proper identification of those producers who supply the market, and an equitable means of compensating those producers from the market's pool proceeds.

As discussed earlier on pooling standards for pool supply plant qualification, the provisions of the consolidated Federal milk orders were not intended to exclude any milk from being pooled on any order, as long as the fluid needs of a marketing area are being served by the milk. At the same time, reform of Federal milk orders did not adopt open pooling, but attempted to provide that each market pool would include the milk that actually is available for serving the fluid needs of the market. The determination of the boundaries of the Central marketing area was guided by the identification of the common characteristics of the predecessor orders that could be consolidated to form the marketing area and to promulgate a marketing order to provide for orderly marketing conditions. The consolidation of the pre-reform orders into the current Central order was not intended to determine those areas from which milk should, or should not, be obtained to serve the market. The adoption of revised pooling standards proposed to be adopted by this final decision should assure milk will be available for the Central market's fluid needs and therefore renders the proposed State unit provision unnecessary. Proposal 7 is not adopted.

## *2. Simultaneous Pooling of Milk on the Order and on a State-Operated Milk Order Providing for Marketwide Pooling*

A proposal, published in the hearing notice as Proposal 8, seeking to exclude the same milk from being simultaneously pooled on the Central order and any State-operated order which provides for marketwide pooling, previously adopted on an interim basis, is proposed to be adopted on a permanent basis by this final decision. The practice of pooling milk on a Federal order and simultaneously pooling the same milk on a State-operated order also has come to be referred to as "double dipping." The Central order did not prohibit milk from being simultaneously pooled on the order and a State-operated order that