all Federal milk orders. The basis upon which a marketing area is determined is founded on the basis of where handlers compete with each other for fluid sales. An important determinant of handlers competing with each other for sales is generally made through a measurement of the route disposition of fluid milk. For the Middle Atlantic marketing area, the order clearly defines route disposition, and its measurement can be made with exacting precision every month. However, the New York-New Jersey marketing order differs from Order 4 in that it provides for the bulk transfers of fluid milk between plants that is classified as Class I-A milk. Order 4 specifically excludes such transfers between plants from meeting its route disposition test.

Opponents of Proposal No. 3 assert, in part, that bulk transfers of Class I-A between plants are an important feature of the Order 2 marketing area because of the market structure that evolved there over time. The basis of providing for bulk transfers of Class I-A milk between plants recognized the market structure and conditions in that order. Opponent witnesses describe "up-country" plants that assemble and separate the skim fraction of producer milk for subsequent transfer to "city" bottling plants for eventual distribution to retail outlets, while leaving the cream fraction in country plants to be further processed into Class II and Class III products, as a unique characteristic of the Order 2 marketplace.

On its face, it is difficult to conclude that adoption of Proposal No. 3 somehow threatens the above described market structure that Order 2 handlers have relied upon for a long period of time. Both the proponent and opponents of Proposal No. 3 recognize and describe similarly the close relationship between Order 2 and Order 4. The record reveals that both orders share, to a significant extent, a common milkshed. The record also reveals that milk movements between orders have been historically equal until the Lansdale plant switched regulation from Order 4 to Order 2. The change in the regulatory and pool status of the Lansdale plant was due to Order 2 allowing for bulk transfers of Class I-A milk as a fluid use which brought the total Class I disposition of the plant to have more milk associated with the New York-New Jersey marketing area than it had with the Middle Atlantic marketing area. This allowance for bulk transfers under the New York-New Jersey order, together with the subordinating language of Order 4, required the regulatory and pool status of the Lansdale plant to shift to Order 2 even

if the Lansdale plant may have had more route sales in Order 4.

The Lansdale plant is physically located within the Order 4 marketing area and until recently had historically been pooled as an Order 4 pool distributing plant. Further, the Lansdale plant is clearly a fluid distributing plant that competes with other handlers for fluid sales in Order 4. In the New York-New Jersey order, it seems to enjoy, from the testimony of some opponent witnesses, the status of a distributing plant while at the same time was inferred to be a "country" plant. Nevertheless, Order 2 recognizes the Lansdale plant as a fluid milk distributing plant with the transferring of milk as a secondary operation. This distinction is made here because Order 2 also recognizes processing plants with manufacturing as a secondary operation. Simply put, the Lansdale plant's primary enterprise is as a fluid distributing plant.

The effect of the New York-New Jersey order provision of allowing for bulk transfers of Class I-A milk and its lack of a route disposition test makes it difficult to determine precisely where the majority of Landsdale's Class I sales take place that includes the bulk transferred milk. The record reveals, in testimony by Johanna, that bulk transfers of Class I-A milk end up eventually as route disposition, although the record does not reveal how much of such milk is distributed on routes within Order 2 or in another marketing area. Pennmarva makes a case from the record evidence that suggests that there is more route disposition in Order 4. In this regard, Johanna's claim that fluid milk transfers from the Lansdale plant were in fact distributed on routes in Order 2 might not be totally accurate on basis of the record evidence. This conclusion is further supported by examining the Order 2 provision of what constitutes Class I–A milk, namely, inclusion of milk distributed on routes in another marketing area. This decision agrees with Pennmarva that a plant which otherwise qualifies as an Order 2 pool plant can dispose of milk on routes in the Order 4 marketing area with such disposition classified as Class I-A, and then once so classified, no further distinction as to the ultimate route disposition is made through the transfer chain.

In summary, a conclusion on the basis of the record of where the greatest route sales of fluid milk are made by Johanna's Lansdale plant cannot be determined. This is problematic because both proponent and opponent witnesses indicate that a plant should be pooled where it enjoys the majority of its Class I disposition, but Order 2 and Order 4 each rely on different forms of measuring this outcome. Due recognition of the regulatory impact on a plant that meets the pooling standards of the New York-New Jersey order is warranted because the plant has met that order's standards. At the same time, Order 4 producers are required by their order to yield to the pricing provisions of another order on the terms of measurement that are not its own.

This recommended decision agrees with an opponent witness' testimony that each marketing order should specify how to resolve differences and conflicts that arise in the regulation and pooling of plants. In this regard, opponents to Proposal No. 3 voiced concern that its adoption would lead to irreconcilable conflict with the provisions of the New York-New Jersey order. Such conflict probably would not be the case if an identical definition and standard of measurement, that is route disposition, existed for both orders.

In short, adoption of Proposal No. 3 would leave determination of the regulatory and pool status of the Lansdale plant solely to the Order 4 route disposition test. However, adoption of this proposal has the effect of causing a change to the New York-New Jersey order which was not open or noticed in this proceeding. Adoption of Proposal No. 3 provides neither clarity nor a basis, at least with respect to the relationship between Order 4 and Order 2, to determine in which order a plant should be pooled.

The apparent intent of Pennmarva's Proposal No. 3 seems clear and consistent with how milk is regulated and pooled throughout the Federal milk order system. In this regard, Pennmarva is asking that milk distributed on routes be the sole test for determining where a plant should be pooled. Proponents and opponents agree that where a plant has most of its sales is the most appropriate basis for making such a determination. Unfortunately, Proposal No. 3 falls short of being able to accomplish this without causing a change to the New York-New Jersey order.

The Johanna witness testified that, in part, the purpose of Proposal No. 3 appeared intended to eliminate the location differential as an Order 2 plant. This would obviously place Johanna at a competitive disadvantage against other Order 2 handlers competing in the market for fluid sales in the Order 2 marketing area. The witness observed correctly that there is a 24.5-cent difference in the location adjustment in Order 2 between the Lansdale plant's applicable zone (the 71–75 mile zone) and the nearer zone (the 61–70 mile