

Upon the basis of the evidence introduced at the hearing and the record thereof, the Administrator, on February 8, 2002, issued a Tentative Final Decision containing notice of the opportunity to file written exceptions thereto.

The material issues, findings, and conclusions, rulings, and general findings of the tentative final decision are hereby approved and adopted and are set forth in full herein. The material issues on the record of hearing relate to:

1. Eliminating the simultaneous pooling of milk on the order and on a State-operated milk order that has marketwide pooling.
2. Allowing overbase milk from California to remain as eligible for pooling on the Upper Midwest Federal milk order.
3. Changing certain pooling provisions of the order regarding performance standards and diversion limits.
4. Changing the rate of partial payments to producers.
5. Determining whether emergency marketing conditions exist that would warrant the omission of a recommended decision and the opportunity to file written exceptions.

## Findings and Conclusions

### *Preliminary Statement:*

Representatives from the California Department of Food and Agriculture, Dairy Marketing Branch, appeared at the hearing to provide information and to answer factual questions about the California State milk order program. Their appearance was at the request of USDA and their participation was provided as a courtesy to the public. The participation of the California officials was neither in support of nor in opposition to any of the proposals or issues that were heard. The California officials provided publications that detailed and explained the history and operations of the California milk order program, which included how milk is pooled and priced under that State order.

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

### *1. Simultaneous Pooling on a Federal and State-Operated Milk Order*

A proposal, published in the hearing notice as Proposal 1, seeking to prevent the simultaneous pooling of milk on the Upper Midwest order and on a State-operated order with 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 milk order and simultaneously pooling the same milk on a State-operated milk order has also come to be referred to as "double dipping." Currently, the Upper Midwest order (Order 30) only provides prohibitions for the simultaneous pooling of the same milk on more than one Federal order. The record provides evidence and support for eliminating the ability of milk receiving the benefits of marketwide pooling through a State-operated milk order from simultaneously being pooled on Order 30.

Proposal 1, which sought to end the practice of double dipping, was proposed by Associated Milk Producers, Inc. *et.al.*, First District Association, and Lakeshore Federated Cooperative. These entities are dairy farmer cooperatives who supply a significant portion of the milk needs of the Upper Midwest marketing area. Other entities who joined in support of this proposal included: Foremost Farms USA; Mid-West Dairymen's Company; Bongards' Creameries; Cady Cheese; Cass-Clay Creamery; Ellsworth Cooperative Creamery; Family Dairies USA; Hastings Cooperative Creamery; Kraft Foods; Lynn Dairy; Manitowoc Milk Producers Cooperative; Milwaukee Cooperative Milk Producers; Muller Pinehurst Dairy; Mullins Cheese; Plainview Milk Products; Swiss Valley Farms; Valley Queen; Weyauwega Milk Products; White Clover Dairy, Inc.; and Hilmar Cheese of Hilmar, California.

A witness appearing on behalf of Associated Milk Producers, Inc. (AMPI), a supporter for the direct elimination of double-dipping, provided evidence and testimony that showed an increasing amount of California milk being pooled on Order 30. For the time period of October 2000 through May 2001, said the AMPI witness, there was an estimated \$11.4 million negative effect on the pool, the equivalent of about a ten-cent (\$0.10) reduction for each hundredweight of milk pooled on the order, as a result of pooling California milk on Order 30. According to the AMPI witness, this estimate was calculated by factoring the amount of milk from California that had been pooled on the Upper Midwest pool from the Order's actual Producer Price Differential (PPD) and applying the difference to the volume of milk pooled on the order.

The AMPI witness indicated the reform of the Federal milk marketing order system, implemented in January 2000, provided economic incentives for California milk to pool on Order 30. Specifically, said AMPI, the use of the

higher of either the Class III or Class IV milk price in setting and moving Class I milk prices had yielded generally higher PPDs than existed in the Upper Midwest region prior to reform.

The AMPI witness surmised that Order 30's pooling of California milk, already pooled under the State-operated milk order of California, resulted in obvious inequities. The witness provided estimates of extent and impact on Upper Midwest dairy farmers and was of the opinion that this situation is severe enough to conclude that the Department should move directly to a final decision and avoid the more lengthy procedure of first issuing a recommended decision and then issuing a final decision.

These views and conclusions by the AMPI witness were supported in testimony by a witness appearing on behalf of Foremost Farms USA (Foremost). The Foremost witness testified that California milk pooled on Order 30 grew from about 10 million pounds to an average of 260 million pounds during the 3-month period of March through May 2001. According to calculations by Foremost, an estimated \$6 million reduction in value for all milk pooled on the order occurred due to the pooling of California milk on Order 30. This revenue, said Foremost, comes from Upper Midwest dairy farmers who already have the lowest PPD in the Federal order system. Acknowledging that tighter pooling provisions may serve to eliminate the double dipping issue, Foremost was of the opinion that tightening pooling standards would not be the best way to accomplish that end.

A witness representing the Mid-West Dairymen's Company/Lakeshore Federated Dairy Cooperative (MDC), a dairy farmer cooperative located in northern Illinois and southern Wisconsin, testified in support of ending double dipping. This witness also spoke on behalf of Lakeshore Federated Dairy Cooperative, which represents over 4,000 dairy farmers located in Illinois, Iowa, and Wisconsin, and whose milk is pooled mostly on the Upper Midwest order and to a lesser extent on the Central and Mideast Federal milk orders. This witness indicated that Mid-West Dairymen's Company milk supplies the fluid market.

The MDC witness expressed concern about equity among producers and equity among handlers. In this regard, the witness maintained that this issue should be handled on an expedited basis. The MDC witness indicated that the Federal order program has a long history of promoting equity to both