

Accordingly, the Marigold witness urged a prompt end of the ability of milk to double dip. By closing this regulatory loophole, said the Marigold witness, equity would be restored to Upper Midwest dairy farmers because the action would ensure that the money paid for milk by a regulated handler is shared among farmers who serve or are available to serve the fluid market.

Land O' Lakes is of the opinion that California does not have marketwide pooling. In support of their proposal, LOL pointed to other State dairy programs. They noted that the North Dakota State Order and the Pennsylvania Milk Marketing Board are currently considering the adoption of marketwide pooling. Other pricing programs, said LOL, such as the Northeast Compact and various over-order pricing agencies such as the Upper Midwest Marketing Agency would appear threatened if Proposal 1 were adopted. Other LOL views and proposals are discussed later in this decision.

Other opposition took the form of describing the general inadequacy of the Upper Midwest's pooling provisions and not the elimination of double dipping per se. While Dairy Farmers of America (DFA) testified that it opposes the ability of the same milk to simultaneously pool on two Federal milk orders, they did not oppose simultaneous pooling occurring on both a Federal and State-operated milk order such as California's. DFA indicated their ability to derive monetary benefits from both the Federal and California State milk order program has been of assistance in meeting their desired business objectives. DFA did submit their own proposal, published in the hearing notice as Proposal 4, which addressed broader pooling standards and concerns. DFA's proposal is discussed later in this decision.

For over 60 years, the Federal government has operated the milk marketing order program. The law authorizing the use of milk marketing orders, the Agricultural Marketing Agreement Act of 1937 (AMAA), as amended, provides authority for milk marketing orders as an instrument that dairy farmers may voluntarily opt to use to achieve objectives consistent with the AMAA and that are in the public interest. An objective of AMAA, as it relates to milk, was the stabilization of market conditions in the dairy industry.

The declaration of the AMAA is specific: "the disruption of the orderly exchange of commodities in interstate commerce impairs the purchasing power of farmers and destroys the value of agricultural assets which support the

national credit structure and that these conditions affect transactions in agricultural commodities with a national public interest, and burden and obstruct the normal channels of interstate commerce." The AMAA provides authority for employing several methods to achieve more stable marketing conditions. Among these is classified pricing, which entails pricing milk according to its use by charging processors differing milk prices on the basis of form and use.

In addition, the AMAA provides for specifying when and how processors are to account for and make payments to dairy farmers. Plus, the AMAA requires that milk prices established by an order be uniform to all processors and that the price charged can be adjusted by, among other things, the location at which milk is delivered by producers (Section 608c(5)). As these features and constraints were employed in establishing prices under Federal milk orders, some important market stabilization goals were achieved. The most often recognized goal was the near elimination of ruinous pricing practices of handlers competing with each other on the basis of the price they paid dairy farmers for milk and in price concessions made by dairy farmers. The need for processors to compete with each other on the price they paid for milk was significantly reduced because all processors are charged the same minimum amount for milk, and processors had assurance that their competitors were paying the same value-adjusted minimum price.

The AMAA also authorizes the establishment of uniform prices to producers as a method to achieve stable marketing conditions. Although some hearing participants are of the opinion that marketwide pooling cannot solve disorderly marketing conditions, marketwide pooling has been adopted in all Federal orders because of its superior features of providing equity to both processors and producers. A marketwide pool, using the mechanism of a producer settlement fund to equalize on the use-value of milk pooled on an order, speaks directly to the objective of the AMAA of ensuring uniform prices to producers supplying a market. The Federal order program purposefully moved away from individual handler pooling—a pooling method not uncommon when many milk marketing orders represented much smaller and much more local milk marketing areas. Through marketwide pooling, the equalization of prices paid to dairy farmers did have implications that affected the competitive relationship between processors along

with uniform prices received by dairy farmers. Under individual handler pooling, the use-values of milk by a handler are averaged, or blended, and distributed separately to only those producers who had supplied the handler. With marketwide pooling, a handler regulated by an order with high Class I use was no longer able to exercise control over producers through the higher blend prices they were able to pay to producers who were, for example, more favorably located to the plant. Similarly, handlers with lower Class I use who were unable to pay as large a blend price found that marketwide pooling greatly improved their position in competing for a supply of milk. Prices paid by handlers were equalized across the entire market where handlers competed with each other for fluid sales and producers received a more uniform price for their milk.

Under the California State milk order program, similar objectives to that of the AMAA are clear. The record evidence indicates the California State order program has a long history in the development and evolution of a classified pricing plan and in providing equity in pricing to handlers and producers. Important as classified pricing has been in setting minimum prices, the issue of equitable returns to producers for milk could not be satisfied by only the use of a classified pricing plan. Some California plants had higher Class I fluid milk use than did others, and some plants processed little or no fluid milk products. As with the Federal order system, producers who were fortunate enough to be located nearer Class I processors received a much higher return for their milk than producers shipping to plants with lower Class I use or to plants whose main business was the manufacturing of dairy products. Over time, disparate price differences grew between producers located in the same production area of the State which, in turn, led to disorderly marketing conditions and practices. These included producers who became increasingly willing to make price concessions with handlers by accepting lower prices and in paying higher charges for services such as hauling. Contracts between producers and handlers were the norm, but the contracts were not long-term (rarely more than a single month) and could not provide a stable marketing relationship from which the dairy farmers could plan their operations.

In 1967, the California State legislature passed and enacted the Gonsalves Milk Pooling Act. The law provided the authority for the California