

Agriculture Secretary to develop and implement a pooling plan, which was implemented in 1968. The California pooling plan provides for the operation of a State-wide pool for all milk that is produced in the State and delivered to California pool plants. It uses an equalization fund that equalizes prices among all handlers and sets minimum prices to be paid to all producers pooled on the State order. While the pooling plan details vary somewhat from pooling details under the Federal order program, the California pooling objectives are, for all intents and purposes, identical to those of the Federal order program.

It is clear from this review of the Federal and the California State programs that the orderly marketing of milk is intended. Both provide a stable marketing relationship between handlers and dairy farmers and both serve the public interest. It would be incorrect to conclude that the Federal and California milk order programs have differing purposes when the means, mechanisms, and goals are so nearly identical. In fact, and as indicated in both briefs and in comments to the tentative final decision by the supporters for Proposal 1, the Federal order program has precedent in recognizing that the California State milk order program has marketwide pooling. Under milk order provisions in effect prior to milk order reform, and under § 1000.76, a provision currently applicable to all Federal milk marketing orders, the Department has consistently recognized California as a State government with marketwide pooling.

Since the 1960's, the Federal milk order program recognized the harm and disorder that resulted to both producers and handlers when the same milk of a producer was simultaneously pooled on more than one Federal order. As noted above, producers do not receive uniform minimum prices, and handlers receive unfair competitive advantages. The need to prevent "double pooling" became critically important as distribution areas expanded and orders merged. The issue of California milk, already pooled under its State-operated program and able to simultaneously pool under a Federal order, has, for all intents and purposes, the same undesirable outcomes that Federal orders once experienced and subsequently corrected. It is clear that the Upper Midwest order needs amending to prevent the ability to pool milk on more than one order when both orders employ marketwide pooling.

There are other State-operated milk order programs that provide for marketwide pooling. For example, New York, as indicated in record testimony,

operates a milk order program for the western region of that State. A key feature explaining why this State-operated program has operated for years alongside the Federal milk order program is the exclusion of milk from the State pool when the same milk is already pooled under a Federal order. Because Federal orders have prohibited the same milk being pooled simultaneously, the Federal order program has had no reason again to address specifically double dipping or double pooling issues, the disorderly marketing conditions that arise from such practice, or the primacy of one regulatory program over another. The other states with marketwide pooling similarly do not double pool Federal order milk.

The record contains various opinions offered to explain why the practice of double dipping has occurred. Some offered that the Class I price structure changes implemented with Federal order reform resulted in a much higher PPD than existed under the old Upper Midwest and Chicago orders, providing a financial incentive. Some cited the change in how orders, including Order 30, zoned Class I prices and producer blend prices, suggesting if these zoning methods had been retained, the incentive for California milk to double dip on Order 30 may never have been an issue. Others noted that the Federal order location value of fluid milk in much of California is actually higher than in Order 30 and thus implied that tighter pooling provisions would most likely prevent California milk from being pooled on Order 30.

These are all interesting and valid observations that can lead to reasonably concluding that California milk would not seek to be pooled on Order 30 if not for the regulatory amendments. However, determining whether double dipping and its impacts are a result of the reformed Class I pricing structure does not lead to the conclusion that the price structure needs to be abandoned or severely altered. Rather, the issues here are whether the double dipping is a pooling problem that needs to be solved and whether the first proposal, with or without various modifications, is an effective solution to that problem. As noted above, the Department believes the pooling problem needs a pooling solution and a modification of the first proposal will effectively solve the problem. When equity is not provided for, the disorderly marketing conditions that have arisen in Order 30 become the same as those existing prior to Federal orders adopting provisions preventing the double pooling of milk.

California milk should only be eligible for pooling on Order 30 when it is not pooled on the California State order and it meets the Upper Midwest's pooling standards. A distinction needs to be made here between a producer and the milk of a producer. While much of the record testimony speaks of producers in the same vein as the milk of producers, it is necessary to clarify the obvious intent of all hearing participants that it is the milk of a producer that becomes pooled. It is clear from the context of the record testimony that this was intended.

The Federal milk order program, including Order 30, does not regulate producers. Rather, the program regulates handlers—those entities that are the first buyers of milk from producers and who incur the minimum payment obligations to producers. The Federal milk order program has no authority to regulate producers in their capacity as producers and cannot, for example, preclude a producer from being pooled anywhere, provided the milk of the producer meets the pooling standards of an order. For this reason, Federal milk orders, including Order 30, provide separate definitions for a producer in the *Producer* definition and for the milk of a producer in the *Producer milk* definition. This distinction is also important because the record evidence indicates California milk delivered directly from farms to plants located outside the State is not pooled on the State order. If a California producer delivers milk directly from the farm to pool plants regulated by the Upper Midwest order, and if that milk satisfies the pooling standards of the Upper Midwest order, that milk will be pooled on the Upper Midwest order.

The amendatory wording provided below, intended to eliminate double dipping, is at some variance from that proposed by the proponents of Proposal 1. The wording is different because the proposed modified wording of Proposal 1 would prevent double dipping on only diverted milk. The wording presented below would apply to any milk that participates in a State-operated milk order that provides for the marketwide pooling of milk and would not prohibit the ability of milk to participate in the Order 30 pool when not part of a State-operated milk order program providing for marketwide pooling.

2. California Overbase Milk and Pooling

A proposal, published in the hearing notice as Proposal 3, that sought to exclude California quota milk from being pooled on the Upper Midwest order is not adopted. As California has quota and overbase prices for milk, this