

proposal would allow overbase milk from California to be eligible for pooling on Order 30.

Two proposals were offered by Land O'Lakes (LOL) that sought to permit the continued pooling of California milk on the Upper Midwest Order. Specifically, a proposal, published in the hearing notice as Proposal 2, would "grandfather" or exempt any California milk previously qualified for pooling on the Upper Midwest order from any amendment to the order which would thereafter exclude the pooling of such milk. This proposal was abandoned and is not discussed further in this decision. Another proposal, published in the hearing notice as Proposal 3, sought to exclude only California quota milk from being pooled on the Upper Midwest order. LOL is a cooperative association that has member producers whose milk is pooled under both the California State and Upper Midwest milk orders.

The witness testifying on behalf of LOL indicated that his organization supports the concept of efficient and orderly marketing and that the pooling of milk under an order should be based on performance. However, LOL indicated they were not in favor of restricting access to pooling to benefit a select few. LOL was of the opinion that fewer restrictions to pooling provides for market efficiencies, resulting in lower costs in serving the Class I needs of a market. The witness testified that LOL engages in double dipping. They indicated they engage in this practice to gain additional revenue to subsidize the losses incurred in servicing the fluid market in Order 30. They did not think marketing conditions warrant the Department of Agriculture treating the issue as an emergency.

The real issue facing the industry, said the LOL witness, is not California milk. The impact of pooling reserve supplies of milk is the same regardless of where the milk is located, said LOL. The witness argued that regardless of location, performance criteria must be met to provide for pooling eligibility, and therefore performance requirements rather than the artificial restrictions offered by Proposal 1 should be addressed. According to the witness, increasing shipping requirements would provide all the equity necessary as handlers shipping the minimum requirements will be forced to ship more milk or reduce the volume of milk pooled. LOL contends that producers have the right to pool milk based on performance, stressing that where the milk originates is irrelevant.

The LOL witness testified that the Class I pricing surface adopted as a result of Federal milk order reform has

allowed for more liberalized pooling, thereby allowing access to higher levels of Class I revenues. The witness said that the net impact of Federal order reform has been positive for Upper Midwest dairy farmers. LOL did stress that access to additional Class I revenues should only be gained through performance, with market participants demonstrating a willingness to service the fluid needs of the market. According to the LOL witness, the utilization of milk for Class I fluid uses will tend to equilibrate as the needs of milk order areas beyond Order 30 are met based on performance. The witness said that the milk of producers should be allowed to move freely to meet the needs of the markets. In this regard, testified LOL, Upper Midwest entities must be willing to share the local proceeds from Class I use if they expect to share other markets' Class I proceeds or risk the loss of credibility when participating in deciding how milk orders should function.

According to the LOL witness, California does not have a marketwide pool. The witness noted that proceeds from fluid and soft dairy product use are paid to producers on the basis of quota, while non-quota milk is priced based on manufacturing values. The returns on quota equity, said LOL, are not distributed marketwide, noting that is has been only recently that the State of California instituted a value difference between quota and overbase milk. It is LOL's assertion that California's lack of marketwide pooling should not prohibit the ability of overbase milk to be pooled on Order 30.

The LOL proposal for allowing the pooling of overbase milk from California on Order 30 should not be adopted for the same reasons discussed in finding that Proposal 1 should be adopted immediately. Regardless of LOL opinions, the only reasonable conclusion that can be reached is that the California State order program does have marketwide pooling and that overbase milk received at a California plant is pooled on the State order and thereby shares in the benefits that accrue to producers under the State's marketwide pooling plan. This conclusion is substantiated by the testimony and participation by California State officials who operate the California State milk order program. Additionally, it seems contrary to the argument advanced by LOL that milk, regardless of where it is located, should be pooled on the basis of performance. California milk, other than a one-time shipment of a days' production of a producer, does not actually leave the

State to consistently service the Order 30's Class I needs.

3. Performance Standards and Diversion Limits

A proposal offered by the Dairy Farmers of America (DFA) and the National Farmers Organization (NFO), published in the hearing notice as Proposal 4, addressed two separate issues: establishing performance standards for milk not traditionally associated with the Upper Midwest marketing area and the ability of pool distributing plants to divert an unlimited volume of milk to nonpool plants. The portion of the proposal seeking to establish diversion limits for pool distributing plants adopted on an interim basis is proposed to be adopted on a permanent basis in this final decision. The record does not support adoption of performance standards for milk based on the location of the producer or the milk of a producer. DFA is a member-owned cooperative of nearly 17,000 farms that produce and market milk across a significant portion of the United States. NFO is also a member-owned cooperative that produces and markets milk in Order 30, the State of California, and in other Federal milk orders.

Specifically, the Upper Midwest order is proposed to be amended to provide a diversion limit of 90 percent of producer receipts, including diversions, for pool distributing plants regulated under the order. In addition, the market administrator may adjust the diversion limit for pool distributing plants as marketing conditions warrant. Since supply plants pooling milk on the Upper Midwest order must ship 10 percent of receipts, including milk diverted to a pool distributing plant and certain other types of plants, there is no reason to impose a diversion limit on supply plants.

DFA testified that two primary benefits of the Federal order program include allowing producers to benefit from the orderly marketing of milk and to share in the marketwide distribution of revenue that results mostly from Class I milk sales. Orderly marketing influences milk to move to the highest value use when needed and for milk to clear the market when not used in Class I, said DFA. The witness insisted that the pooling of distant milk that does not show a service to the Class I market is inconsistent with Federal order policy, and such milk should not be eligible to share in the revenue that accrues from Class I use.

Pooling standards are universal in their intention, said DFA, requiring a measure of commitment to a market