

partial payment. Milk prices are an outcome of supply and demand conditions for milk. Prices tend to increase during tighter supplies and fall when milk is plentiful relative to demand. The up and down fluctuations of milk prices does not in itself indicate a trend, nor does it suggest a structural flaw in how the order prices milk since price fluctuations are a response to changes in the quantity of milk supplied and in the quantity of milk demanded.

Since Federal order reform, a 17-month period at the time of the hearing, the data shows two months in which the partial payment and the final payment were equal. However, if the partial payment rate were increased to 103 percent of the lowest class price, as proposed, four months (about 24 percent of the 17-month period) would have had a partial payment greater than or equal to the final payment.

The opponents of this proposal noted that Federal order reform and its newer pricing system have only been in place for a short time—17 months—suggesting that there has not been adequate time to observe various pricing scenarios that might occur over a more lengthy evaluation period. For example, there has been no significant price decline since the implementation of Federal order reform that would serve to aid in evaluating the effect of declining prices on the difference between the partial and final payment obligations. Class III and Class IV prices have been relatively stable during the beginning two thirds of the 17-month period, with prices beginning to show consistent increases during the last third of the period (December 2000 through May 2001).

The record testimony and post-hearing briefs supporting a change in the rate of partial payment assert that payments to producers and cooperatives, particularly by a cheese plant, are a “pass through” from the Federal order pool. A cheese plant/Class III handler receives the PPD from the pool (a “pool draw”) in order to pay the order’s minimum prices to producers. However, the majority of the payment to producers and cooperatives in the Upper Midwest is derived from cheese sales. The statistical uniform or blend price is received by producers in the form of a PPD calculated from the marketwide pooling of all milk on the order at classified prices. In a market like the Upper Midwest, which has a relatively low Class I differential (\$1.80) and low Class I utilization (15–20 percent), the resulting PPD is less than in markets with higher Class I use and higher Class I differential values. Over the 17-month period of January 2000 through May 2001, the Upper Midwest

PPD ranged from 43 cents to \$1.43 and averaged \$0.83 per cwt. Handlers did not know what the PPD would be until several days before payment was due to its dairy farmers. In light of this, it is not reasonable to establish a partial payment rate at a level that may increase the likelihood of requiring handlers to pay out part or all of the PPD prior to receiving payments from the producer settlement fund. This caution seems especially important in the Upper Midwest market where the PPD is relatively low and can be completely offset by the price difference between the prior month’s lowest class price and the current month’s Class III price.

There is no compelling reason for changing the payment rate of the partial payment to producers. In the data presented by proponents at the hearing, the partial payment required by the order exceeded the final payment during numerous months. In most cases, the months in which the partial payment exceeded the final payment occurred prior to the implementation of Federal order reform.

A DFA exception to the tentative final decision asserted that the current partial payment terms of Order 30 result in dairy farmers effectively financing the operations of handlers. The partial payment provision of the order is a minimum requirement placed on handlers to pay producers. The provision places no restrictions on producers or handlers to negotiate alternative payment arrangements that may call for more frequent payments. Accordingly, no persuasive argument is made for a higher rate frequency of payment for milk beyond that already provided under the terms of the order.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions, and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this final decision.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when the Upper Midwest order was first issued and

when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the tentative marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

Rulings on Exceptions

In arriving at the findings and conclusions, and the regulatory provisions of this decision, each of the exceptions received was carefully and fully considered in conjunction with the record evidence. To the extent that the findings and conclusions and the regulatory provisions of this decision are at variance with any of the exceptions, such exceptions are hereby overruled for the reasons previously stated in this decision.

Marketing Agreement and Order

Annexed hereto and made a part hereof is one document: A Marketing Agreement regulating the handling of milk. The Order amending the order regulating the handling of milk in the Upper Midwest marketing area was approved by producers and published in the **Federal Register** on April 22, 2002 (67 FR 19507) as an Interim Final Rule. Both of these documents have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered, that this entire final decision and the Marketing Agreement annexed hereto be published in the **Federal Register**.