

objectives are basically identical to those of the Federal program.

It is clear from this review of the Federal and California State programs that the orderly marketing of milk is intended in both systems. Both plans 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, 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(c), a provision currently applicable to all Federal milk marketing orders, the Department has consistently recognized California as a State government program 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. When this occurs, 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 be pooled under a Federal order, has essentially the same undesirable outcomes that Federal orders once experienced and subsequently corrected. It is clear that the Pacific Northwest and Western orders should be amended to prevent the ability of milk to be pooled 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 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 of the impossibility of the same milk being pooled simultaneously, the Federal order program has had no reason to specifically address 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 testimony and evidence show milk pooled on the Western order originates from locations distant from the area. However, this decision acknowledges that with the advent of the economic incentives for California milk to be pooled on the Western order and, at the same time, enjoy the benefits of being pooled under California's State-operated milk order program, more milk has come to be pooled on the order that has no legitimate association with the integral milk supplies of Western order pool plants. The association at present has been made possible only through what some market participants describe as a regulatory loophole. The record also supports concluding that the Pacific Northwest order should be similarly amended to preclude the ability to simultaneously pool the same milk on the order if the same milk is already pooled on a State-operated order that provides for marketwide pooling.

California milk should only be eligible for pooling on the Pacific Northwest and Western orders when it is not pooled on the California State order and when it meets the Pacific Northwest and Western order pooling standards. It is the ability of milk from California to "double dip" that is a source of disorderly marketing conditions for the Western order and should be preempted in the case of the Pacific Northwest order.

Proposals 1 and 10 offer a reasonable solution for prohibiting the same milk to draw pool funds from Federal and State marketwide pools simultaneously. It is consistent with the current prohibition against the same milk pooling simultaneously in more than one Federal order pool. Adoption of Proposals 1 and 10 will not establish any barrier to the pooling of milk from any source that actually demonstrates performance in supplying the Pacific Northwest and Western market's Class I needs. In this regard, adoption of Proposals 1 and 10 specifically prohibit the practice of double dipping which two other proposals (Proposals 2 and 9), discussed below, do not.

The amendatory language provided below has been modified by the Department but nevertheless accomplishes the intent of Proposals 1 and 10. As published in the hearing notice, amendatory language was proposed for the *Producer* definition of the Pacific Northwest and Western milk orders. The amendments adopted in this tentative decision to prohibit double dipping has been made in each respective order's *Producer milk*

definition. This change is made because milk marketing orders do not regulate producers in their capacity as producers. Additionally, the amendatory language adopted is consistent with that adopted in other milk orders where the practice of double dipping has been eliminated.

2. Pooling Standards of the Western Order

Testimony summaries regarding the pooling standards for the Western order are provided individually. The discussion of all pooling standards and the decision's findings and conclusions regarding pooling standards is presented immediately after testimony summary for d below.

a. Supply Plant Performance Standards

An inadequacy of the supply plant pooling provision contributes to the inappropriate pooling of milk and the unwarranted erosion of the blend price received by those producers who are regularly and consistently serving the fluid demands of the Western marketing area. Proposal 3, offered by DFA, seeking adoption of a "net shipments" standard for supply plant deliveries to the order's distributing plants for the purpose of meeting the shipping standard, should be adopted immediately. A net shipments standard would exclude from a supply plant's qualifying shipments any transfer or diversion of bulk fluid milk products made by the distributing plant receiving the shipment.

The Western marketing order currently provides automatic pool plant status during the 6-month period of March through August for supply plants provided they were pool plants during each of the immediately preceding months of September through February. The current order does not provide for a net shipments method in determining if the supply plant performance standard has been met.

A witness appearing on behalf of DFA testified that a net shipments provision for pooling purposes would better ensure that milk physically received and retained at a distributing plant for Class I use would be a superior method of determining if the supply plant performance standard is being met. According to the witness, this feature would deter a supply plant from physically shipping milk into the facilities of a distributing plant only to have the milk reloaded and moved to another plant for uses other than Class I. The witness added that a net shipments provision also would ensure that milk being pooled was