

the concept of "assembly" is far different from the concept of "balancing." This is especially so given the context of testimony explaining balancing and balancing costs as a reflection of unused manufacturing plant capacity while diminimus testimony on milk assembly and assembly costs was offered.

4. Pooling Provision Clarifications

Proposals 15 and 16, seeking to clarify order language in the *Producer* and *Producer milk* provisions of the Western order, should be adopted immediately. Currently the *Producer* provision does not list Class II milk at nonpool plants as a type of utilization that a handler can opt to not pool without causing a producer to lose producer status. The current *Producer milk* definition does not allow a dairy farmer who lost producer status to again qualify milk for diversion until delivery of one days' milk production has been received at a pool plant.

Proposal 15, offered by the Western order Market Administrator (MA), seeks to modify the *Producer* provision by adding Class II utilization of milk at a non-pool plant as a type of milk utilization a handler may elect to not pool without jeopardizing the producer status of that producer. Proposal 16, also offered by the MA, seeks to modify the *Producer milk* provision by allowing a dairy farmer to re-qualify for producer status in the same manner that a dairy farmer who has never qualified can have their milk pooled on the order.

Witnesses appearing on behalf of DFA and NDA testified in support of Proposals 15 and 16. The witnesses stated that both proposals make necessary changes to the order that reflect current market needs. Furthermore, said the witnesses, the changes will assist in the interpretation and administration of the order. Neither proposal received opposition testimony.

5. Determination of Emergency Marketing Conditions

Evidence presented at the hearing establishes that the pooling standards of the Western order are inadequate and have resulted in the unwarranted erosion of the blend price received by producers who are serving the Class I needs of the market and should be changed on an emergency basis. The unwarranted erosion of such producers' blend prices stems, in part, from improper performance standard features as they relate to pool supply plants, from inadequate features as they relate to producer milk diversions by distributing plants, and the PBTH provision. These shortcomings of the

pooling provisions have allowed milk that does not provide consistent and reasonable service in meeting the needs of the Class I market to be pooled on the Western order. Additionally, the PBTH provision gives rise to disorderly marketing conditions and renders the order unable to establish prices to handlers that are uniform.

Consequently, it is determined that emergency marketing conditions exist and the issuance of a recommended decision is therefore being omitted. The record clearly establishes a basis as noted above for amending the order on an interim basis and the opportunity to file written exceptions to the proposed amended order remains.

Evidence presented at the hearing also establishes that California milk pooled simultaneously on the California State-operated order and a Federal order, a practice commonly referred to as double dipping, would render the Pacific Northwest milk order and does render the Western milk order unable to establish prices that are uniform to producers and to handlers and contributes to the unwarranted erosion of milk prices to Western producers and the erosion of milk prices that could result to producers supplying milk for the Pacific Northwest marketing area should double dipping occur in the Pacific Northwest marketing area.

In view of this situation, an interim final rule amending the orders should be issued as soon as the procedures are completed to determine the approval of producers whose milk is pooled in both the Pacific Northwest and Western orders.

Rulings on Proposed Findings and Conclusions

Briefs, 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 decision.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when the Pacific Northwest and Western orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and

confirmed, except where they may conflict with those set forth herein.

The following findings are hereby made with respect to the aforesaid marketing agreements and orders:

(a) The interim marketing agreements and the orders, 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 areas, and the minimum prices specified in the interim marketing agreements and the orders, 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 interim marketing agreements and the orders, 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, the marketing agreements upon which a hearing has been held.

Interim Marketing Agreement and Interim Order Amending the Orders

Annexed hereto and made a part hereof are two documents, an Interim Marketing Agreement regulating the handling of milk, and an Interim Order amending the orders regulating the handling of milk in the Pacific Northwest and Western marketing areas, which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered that this entire tentative decision and the interim order and the interim marketing agreement annexed hereto be published in the **Federal Register**.

Determination of Producer Approval and Representative Period

The month of April 2002 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the order, as amended and as hereby proposed to be amended, regulating the handling of milk in the Pacific Northwest and Western marketing areas is approved or favored by producers, as defined under the terms of the orders as hereby proposed to be amended, who during such representative period were engaged in the production of milk for sale within the aforesaid marketing areas.