

provides for marketwide pooling prior to adoption of the interim rule. Proposal 8 was offered by A-E, Swiss Valley Dairy, AMPI, Family Dairies USA, FDA, Foremost, Milwaukee Cooperative Milk Producers, Manitowoc Milk Producers Cooperative, and Mid-West Dairymen's Company.

The AMPI witness, testifying on behalf of all the proponents of Proposal 8, stressed that a producer is prohibited from pooling the same milk on more than one Federal order. The witness maintained that the same restriction should be applicable between the Central order and any other regulatory authority that provides for marketwide pooling and the marketwide distribution of pooling revenue. According to the witness, this has been occurring with milk pooled under the California State-operated milk order program since March 2001 and continues.

The AMPI witness explained that the Central order pooling provisions allow a one-time minimal delivery of a single day's milk production of California producers to a Central order pool plant to qualify all subsequent milk production of those California producers on the Central order by diversion. However, the witness stressed, all of the diverted California milk is pooled on the State's milk order program and receives the pricing benefits that the California State program offers its dairy farmers.

The AMPI witness testified that the volume of California milk pooled on the Central order has been increasing since March 2001 and is unnecessarily reducing milk prices paid to Central order producers. The witness presented calculations that indicated that the impact on the Central order blend price was an average reduction of about 2 cents per hundredweight, amounting to almost \$2 million in the 7-month period of March through September 2001. The witness stated that due to the obvious injurious effect on Midwest dairy farmers, the Department should put an end to the practice of double dipping and to do so on an emergency basis.

A witness testifying on behalf of the proponents explained that the reason milk used in manufactured products is included in a marketwide pool is that such milk represents a reserve supply of milk that is available to serve fluid distributing plants when needed. Accordingly, the witness stressed that the same milk cannot be considered to be available as a supply for fluid distributing plants regulated under two different marketwide pools. The witness explained that Proposal 8 would not preclude the pooling of California milk or milk from any other jurisdiction that

has marketwide pooling on the Central order. However, the proposal would preclude the pooling of the same milk on the Central order when also pooled under some other order, like the California State milk order that provides for marketwide pooling. In this regard, the witness stated that there is no doubt that California's milk order pooling plan provides for marketwide pooling, adding that those who say it does not probably are basing their conclusion on California's quota and overbase pricing for milk.

Several other proponent witnesses representing cooperative associations whose member milk is pooled under the Central order supported the adoption of the proposal to eliminate "double dipping" as did two distributing plant operators. Both of the fluid processor representatives argued that milk originating from outside of a 500-mile radius of any of the order's distributing plants is not realistically available to serve the Class I market on a regular basis.

The representative from Land O'Lakes was opposed to adopting Proposal 8. The witness asserted that, despite evidence to the contrary, California does not have a marketwide pool. The witness explained that producers are paid on the basis of a quota price for milk used in fluid and soft dairy product uses, while the basis for non-quota milk is manufacturing values. The returns to producers arising from quota uses of milk, stated the LOL witness, are not distributed marketwide.

The LOL witness proposed a modification to Proposal 8 that would eliminate "double dipping" only with respect to the "quota" portion of the milk associated with the Central order and allow simultaneous pooling of "overbase" California milk on both the California and Central orders. The witness expressed concern that elimination of the ability of the same milk to be pooled simultaneously under a Federal order and a State order with marketwide pooling would cause problems in dealing with milk supplies from other States—such as Pennsylvania and North Dakota—that are considering modifying provisions to include marketwide pooling.

For over 60 years, the Federal government has operated the milk marketing order program. The law authorizing the use of milk marketing orders, the Agricultural Marketing Agreement Act of 1937 (AMAA), as amended, provides authority for milk marketing orders as an instrument which dairy farmers may voluntarily opt to use to achieve objectives consistent with the AMAA and that are in the

public interest. An objective of the AMAA, as it relates to milk, was the stabilization of market conditions in the dairy industry. The declaration of the AMAA is specific: "the disruption of the orderly exchange of commodities in interstate commerce impairs the purchasing power of farmers and destroys the value of agricultural assets which support the national credit structure and that these conditions affect transactions in agricultural commodities with a national public interest, and burden and obstruct the normal channels of interstate commerce."

The AMAA provides authority for employing several methods to achieve more stable marketing conditions. Among these is classified pricing, which entails pricing milk according to its use by charging processors differing milk prices on the basis of form and use. In addition, the AMAA provides for specifying when and how processors are to account for and make payments to dairy farmers. Plus, the AMAA requires that milk prices established by an order be uniform to all processors and that the price charged can be adjusted by, among other things, the location at which milk is delivered by producers (Section 608c(5)).

As these features and constraints provided for in the AMAA were employed in establishing prices under Federal milk orders, some important market stabilization goals were achieved. The most often recognized goal was the near elimination of ruinous pricing practices of handlers competing with each other on the basis of the price they paid dairy farmers for milk and in price concessions made by dairy farmers. The need for processors to compete with each other on the price they paid for milk was significantly reduced because all processors are charged the same minimum amount for milk, and processors had assurance that their competitors were paying the same value-adjusted minimum price.

The AMAA also authorizes the establishment of uniform prices to producers as a method to achieve stable marketing conditions. Marketwide pooling has been adopted in all Federal orders because of its superior features of providing equity to both processors and producers, thereby helping to prevent disorderly marketing conditions. A marketwide pool, using the mechanism of a producer settlement fund to equalize on the use-value of milk pooled on an order, meets that objective of the AMAA of ensuring uniform prices to producers supplying a market.

The California State milk order program clearly has objectives similar to