

those of the AMAA. Exhibits presented at the hearing indicate that the California State order program has a long history in the development and evolution of a classified pricing plan and in providing equity in pricing to handlers and producers. Important as classified pricing has been in setting minimum prices, the issue of equitable returns to producers for milk could not be satisfied by only the use of a classified pricing plan. Some California plants had higher Class I fluid milk use than did others and some plants processed little or no fluid milk products. As with the Federal order system, producers who were fortunate enough to be located nearer Class I processors had been receiving a much larger return for their milk than producers shipping to plants with lower Class I use or to plants whose main business was the manufacturing of dairy products. Over time, disparate price differences grew between producers located in the same production area of the State which, in turn, led to disorderly marketing conditions and practices. These included producers who became increasingly willing to make price concessions with handlers by accepting lower prices and in paying higher charges for services such as hauling. Contracts between producers and handlers were the norm, but the contracts were not long-term (rarely more than a single month) and could not provide a stable marketing relationship from which the dairy farmers could plan their operations.

In 1967, the California State legislature passed and enacted the Gonsalves Milk Pooling Act. The law provided the authority for the California Agriculture Secretary to develop and implement a pooling plan, which was implemented in 1968. The California pooling plan provides for the operation of a State-wide pool for all milk that is produced in the State and delivered to California pool plants. It uses an equalization fund that equalizes prices among all handlers and sets minimum prices to be paid to all producers pooled on the State order. While the pooling plan details vary somewhat from pooling details under the Federal order program, the California pooling objectives are basically identical to those of the Federal program.

It is clear from this review of the Federal and the 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 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 Central order 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 Central order originating from places distant from the area. However, the tentative decision and this decision acknowledge that with the advent of the economic incentives for California milk to be pooled on the Central 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 the Central order pool plants. The association was possible only through what some market participants describe as a regulatory loophole.

California milk should only be eligible for pooling on the Central order when it is not pooled on the California State order and when it meets the Central's pooling standards. It is the ability of milk from California to "double dip" that is a source of disorderly marketing conditions and for much more milk being pooled on the Central order.

Proposal 8 offers a reasonable solution for adding a prohibition on allowing the same milk to draw pool funds from Federal and State marketwide pools simultaneously. It is consistent with the current prohibition against allowing the same milk to participate in two Federal order pools simultaneously. Adoption of Proposal 8 in both the tentative and this final decision will not establish any barrier to the pooling of milk from any source that actually demonstrates performance in supplying the Central market's need for milk used in Class I.

3. Rate of Partial Payments to Producers

A proposal that would change the rate of the partial payment to producers and cooperatives for milk delivered during the first 15 days of the month to the lowest class price for the prior month times 110 percent, published in the hearing notice as Proposal 6, was not adopted in the tentative decision and is not proposed to be adopted in this final decision. Therefore, the partial payment rate will remain as currently provided for by the order—at the lowest class price for the prior month.

This proposal offered by DFA intends to improve producer cash flow by bringing the partial payment into a closer relationship to the final blend price and to have the partial payment more closely reflect the value of the milk delivered to handlers during the first 15 days of the month. According to the DFA *et al.*, witness, the partial payment rate has declined as a share of the final payment since the consolidation of the Central market under milk order reform.

The DFA, *et al.*, witness stressed that producers need a more consistent cash flow than they currently are experiencing. The witness acknowledged that overpayment in the partial payment could be a problem if the producer does not have enough funds coming in the month's final