

cooperatives and handlers are also at liberty to negotiate agreements for more frequent billings for milk and payments for milk above the minimum established by the order. As made evident by the record, more flexible partial payment options are available to both producers and handlers than relying solely on changing the minimum payment provisions.

As the Leprino witness noted, DFA's proposal does not incorporate or blend the higher-valued uses of milk in their analysis. In response to this observation, the Department compared the relationships between the partial and total payment using various percentages of the Central order's previous month's blend price. Interestingly, if the desired objective is to more closely approximate the partial payment rate using the 36-month period before order reform, the proponents' 105 percent rate of the previous month's lowest class price does seem to best accomplish this. Nevertheless, the same limitations and concerns mentioned above prevent a finding that the Central order's rate for partial payment should be increased.

The tentative decision and this final decision find that the cash flow concerns of producers may be better served by the adoption of other proposals considered in this proceeding. Other amendments adopted in this decision affecting the pooling of milk in the Central order will likely reduce the erosion in the blend price received by Central producers. It is expected that higher blend prices would result from more accurately identifying those producers and the milk of those producers who actually serve the Class I needs of the market. Similarly, the relationship between the partial payment and the total price received by producers may change by the adoption of these pooling standard amendments. Accordingly, a finding that the rate of partial payment to producers by handlers should be increased is not supported by the evidence contained in the record of this proceeding.

#### *4. Determining Whether Emergency Marketing Conditions Existed Warranting the Omission of a Recommended Decision and the Opportunity To File Written Exceptions*

Evidence presented at the hearing established that the pooling standards of the Central order were inadequate and were resulting in the erosion of the blend price received by producers 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 from improper performance standards as they

relate to pool supply plants and the lack of limits for pool plant diversions to pool and nonpool plants. These shortcomings of the pooling provisions have allowed milk that does not provide a reasonable or consistent service to meeting the needs of the Class I market to be pooled on the Central order. Consequently, it was determined that emergency marketing conditions existed, and the issuance of a recommended decision was therefore omitted. The record clearly established a basis, as noted above, for amending the order on an interim basis and provided an opportunity to file written exceptions to the proposed amended order.

Evidence presented at the hearing also established that California milk pooled simultaneously on the California State-operated order and the Central Federal order, a practice commonly referred to as double dipping, rendered the Central Federal milk order unable to establish prices uniform to producers and to handlers and also has contributed to the unwarranted erosion of milk prices to Central producers.

In view of this situation, an interim final rule amending the order was issued as soon as the procedures were completed to determine the approval of producers.

#### **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 decision.

#### **General Findings**

The findings and determinations hereinafter set forth supplement those that were made when the Central 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 Central marketing area was approved by producers and published in the **Federal Register** on February 12, 2003 (68 FR 7070) 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**.

#### **Determination of Producer Approval and Representative Period**

May 2003 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the order, as amended in the Interim Final Rule published in the **Federal Register** on February 12, 2003 (68 FR 7070), regulating the handling of milk in the Central marketing area is approved or favored by producers, as defined under the terms of the order (as amended and as hereby proposed to be amended) who during such