provide the same type of pooling standard that has been proposed for the Tennessee Valley order and that was incorporated in the Department's recommended [and final] decisions for the new Southeast order.[1] Inclusion of this provision in each of these orders will provide regulatory compatibility throughout the Southeast, he said.

The witness stated that the Mid-Am proposal would return the Superbrand plant to its former status as a pool plant under Order 5. In terms of its sales and procurement pattern, the plant is more closely associated with the Carolina market, he added.

The Mid-Am spokesman testified that the proposed change in pooling standards is a departure from the traditional method of determining where a distributing plant should be regulated when it meets the pooling standards of more than one order. The traditional method, he explained, regulated a plant wherever it had the most sales. He said that the principle behind that practice was to insure that all handlers having sales in an order area were subject to the same regulatory provisions as their competition. However, he added, with the advent of large processing plants with sales distribution over wide geographic areas, the traditional method of pooling distributing plants has become obsolete.

There was no opposition to this proposal either at the hearing or in post-hearing briefs.

For the most part, Federal milk orders have traditionally regulated plants according to where they had the most sales. The reasoning behind that policy has been to ensure that all handlers having sales in a Federal order marketing area were subject to the same minimum prices (adjusted for plant location) and other regulatory provisions as their competition. When these provisions were first incorporated in orders, markets were primarily local in nature. At any given location, it was common for Class I prices to differ among orders, and it was common for each order to have a unique set of provisions.

Most of the provisions in Federal milk orders today are standardized. For example, all orders have uniform classification and allocation provisions. Similarly, most Federal order Class I prices are properly aligned. As noted above, for example, the Class I price at Kingsport, Tennessee, is the same whether Land-O-Sun's plant is regulated under Order 5 or Order 11; the Southern Belle plant at Somerset, Kentucky, would be subject to a higher Class I price under Order 11 than would apply at the plant under Order 46; and the Superbrand plant at Greenville would be subject to the same Class I price whether it was regulated under Order 5 or Order 7.

Consequently, it must be concluded that the competitive equity that was, and continues to be, sought by having competing handlers subject to the same rules and Class I prices can be achieved in these marketing areas by pooling distributing plants under the orders applicable to the marketing areas in which the plants are located. Specifically, the pooling standards of the Tennessee Valley and Carolina orders should be amended to fully regulate all distributing plants that meet the orders' pooling standards and that are located within their respective marketing areas.

Under the provisions adopted here for the Carolina and Tennessee Valley orders, a plant that qualifies as a pool distributing plant and which is located within the marketing area will be regulated under the order applicable to that marketing area even if it meets the pooling standards of another order and has greater sales in such other order's marketing area. The nearby Southeast order, Louisville-Lexington-Evansville order, and Upper Florida order contain provisions (§§ 1007.7(g)(4), 1046.7(e)(3), and 1006.7(d)(3), respectively) that conform to the proposed provisions by yielding regulation of such plants to the other order.

Orders 5 and 11 also should be modified to recognize another order's primacy to regulate a plant that meets such other order's pooling standards and that is within the other order's marketing area. This is accomplished in §§ 1005.7(e)(3) and 1011.7(e)(3).

A clarifying change should also be made to §§ 1005.7(e)(5) and 1011.7(e)(5). At present, these paragraphs, which are designated as §§ 1005.7(d)(4) and 1011.7(d)(4), state that ''the term pool plant shall not apply to a plant qualified pursuant to paragraph (b) of this section which also meets the pooling requirements for the month under another Federal order.'' A problem could arise with this language because during certain months of the year a supply plant may qualify as a pool plant by shipping less than 50 percent of its receipts to distributing plants. For example, if a supply plant shipped 40 percent of its receipts to pool distributing plants under Order 5 and 40 percent of its receipts to distributing plants under Order 11, both orders, pursuant to the language quoted above, would yield regulation of the plant to the other order, leaving the plant in a state of regulatory limbo. To prevent this unlikely event from occurring, the paragraph should be modified to read: ''The term pool plant shall not apply to a plant qualified pursuant to paragraph (b) of this section if the plant has automatic pooling status under another Federal order or if the plant meets the pooling requirements of another Federal order during the month and makes greater qualifying shipments to plants regulated under such other order than to plants regulated under this order.''

3. Supply Plant Pooling Standards Under the Tennessee Valley Order

The supply plant pooling provisions for the Tennessee Valley order should be amended to provide automatic pooling status for a supply plant which met the order's shipping standards during the preceding months of July through February.

Armour Food Ingredients Company (Armour) proposed the change in supply plant pooling standards. A spokesman for Armour testified that the company operates a supply plant at Springfield, Kentucky, that has been a pool plant under Order 11 since August 1992. He said that the facility is a ''dual Grade A/Grade B plant.'' The Grade A part of the plant is used to assemble Grade A milk from producers' farms for transshipment to pool distributing plants, while the Grade B facility is used to process surplus milk into Class III products, he explained.

The witness testified that Order 11 now requires Armour to ship milk to distributing plants every month of the year. However, much less milk is needed from Armour during the spring than during the other months of the year, he said. Consequently, he concluded, Armour and its distributing plant customers are incurring receiving and hauling costs for no other purpose than to satisfy the order's shipping requirements.

The witness introduced an exhibit which showed that from August 1992 through October 1994 Armour shipped a monthly average of 71 percent of its receipts to pool distributing plants. The exhibit also showed that when shipments of surplus milk from these same pool distributing plants to Armour were subtracted from the receipts from Armour, the distributing plants, on average, kept 34 percent of the milk that was sent to them.

There was no opposition to this proposal either at the hearing or in post-hearing briefs.

The provision proposed by Armour is included in many Federal milk orders

[1] Official notice is taken of the final decision for the Southeast order issued on May 3, 1995 (60 FR 25014).