

because of the seasonal variation in milk production. This variation is also evident in the Tennessee Valley market. In 1993, the average daily production per producer in this market was 2,220 pounds. However, this daily average reached a low of 1,941 pounds during the month of July and peaked at 2,481 pounds during May. As a group, the months of March through June had a daily average of 2,375 pounds, compared to 2,149 pounds during the months of July through February.

There is no merit in requiring supply plants to receive, reload, and ship milk to distributing plants if the milk is not needed or if closer milk is available directly from producers' farms. In addition to the statistics suggesting that supply plant shipments during the months of March through June are unnecessary, the lack of any contradictory testimony from Order 11 distributing plant operators must be interpreted as concurrence with the view that supply plant shipments are simply not needed during the months of March through June. In view of this evidence, the proposal should be adopted.

Section 1011.7(b)(3) of the Tennessee Valley order, as proposed to be amended here, also should be modified to clarify what would happen if a shipping requirement were instituted during the months of March through June pursuant to § 1011.7(b)(4). First, it should be understood that a new supply plant or one that did not meet the order's shipping requirements during the months of July through February would be subject to the 40 percent supply plant shipping requirement now in the order.

If the market is short of milk during the "free-ride" months of March through June and the market administrator determines that additional milk is needed from pool supply plants pursuant to § 1011.7(b)(4), any increase in shipping percentage would be added to the percentage that is then applicable to the plant. For instance, if the market administrator determines that a 10-percent point increase in shipments is needed, a plant that would have had to ship 40 percent of its receipts would be required to ship 50 percent. However, a plant in "free-ride" status, which normally would not have had to make any shipments, would have to ship 10 percent. The market administrator's ability to require additional milk from supply plants, even during the free-ride period of March through June, will help to ensure that the market has adequate supplies of milk for fluid use during all months of the year.

At the present time, §§ 1005.7(b) and 1011.7(b) of the Carolina and Tennessee Valley orders, respectively, authorize the Director of the Dairy Division to adjust supply plant shipping standards to obtain needed shipments of milk or to prevent uneconomic shipments. This provision was not an issue at the hearing. However, in conjunction with the other changes in pooling provisions that were adopted, the recommended decision stated that authority to adjust supply plant shipping standards should be given to the market administrator of Orders 5 and 11. Although interested parties were invited to comment on this, as on other recommendations, no comments were received in opposition to this suggestion.

With all of the marketing information immediately available to him or her, the market administrator is in an ideal position to sense the changing needs of the market and to obtain industry views concerning the desirability of adjusting supply plant shipping requirements. As a result, the market administrator will be able to attend to the need for such temporary revisions in a timely fashion and will be able to better serve the changing needs of handlers and producers under the Carolina and Tennessee Valley orders.

A similar conforming change also should be made in § 1011.13(e)(3) of the Tennessee Valley order for the same reasons. This change will allow the market administrator to increase or decrease, by 10 percentage points, the diversion limitations applicable to a proprietary bulk tank handler.

4. Distributing Plant Pooling Standards Under the Carolina Order

Proposals to amend the Order 5 in-area route disposition requirement for pool distributing plants should not be adopted.

At the present time, a distributing plant must dispose of at least 60 percent of its fluid milk product receipts in Class I during the months of August through November, January, and February and at least 40 percent in each of the other months to qualify as a pool plant under Order 5. In addition, at least 15 percent of the plant's route disposition must be in the marketing area.

Milkco, Inc., testified in support of its proposal to change the in-area route disposition standard of Order 5 from 15 percent to 10 percent. At the hearing, Milkco modified its proposal to the lesser of 1500 pounds daily or 10 percent of a plant's fluid milk receipts sold as Class I.

A witness representing Milkco, Carolina Dairies, Hunter Farms, Inc.,

Dairy Fresh, Inc., and Pine State Creamery testified that the original proposal had been modified to include language similar to that contained in the recommended decision of the proposed Southeast Federal order.

The witness testified that the reason for proposing a change in the in-area route disposition requirement was that partially regulated handlers were constantly increasing their Class I distribution into the Order 5 marketing area. He estimated that the average distribution for 1994 was between 25 million and 35 million pounds. He claimed that this distribution is attributed to sales from partially regulated plants located in Virginia.

The witness explained that the Virginia State Milk Commission prices Class I sales made outside the State of Virginia at the Federal order Class II price. He said that this creates a problem of accountability for those Class I sales moving from Virginia to another state. He claimed that the possibility exists that, in some instances, not all of those sales may be accounted for and paid for at the appropriate price.

The witness stated that the proposed amendment would provide uniformity between Order 5 and surrounding orders. He also claimed that the proposed change would not be burdensome to handlers located in Virginia if these handlers are already paying prices equivalent to, or greater than, the Order 5 Class I price.

The general manager for Carolina Virginia Milk Producers Association (CVMPA) also testified in support of the revised proposal. He stated that the proposal would provide uniformity between Order 5 and neighboring orders and that it would eliminate potential inequities between Order 5 handlers and handlers regulated by the Virginia Milk Commission.

The CVMPA representative asserted that the proposal would regulate some partially regulated plants that may be subject to a lower price for milk used in fluid milk products than fully regulated plants under Order 5. He explained that handlers regulated under Order 5 must pay at least the minimum Federal order class prices for their milk. He claimed that plants located in Virginia and regulated by the Virginia Milk Commission have a competitive advantage on raw milk costs compared to handlers fully regulated under Order 5. The witness indicated that the Class I price established and regulated by the Virginia Milk Commission has historically been higher than the Order 5 price but that the Commission