

production of the milk of a dairy farmer be physically received at a pool plant anytime during the first month a producer is associated with the market before the milk of a producer can be diverted. Provisions for diverting milk are a desirable and needed feature of an order because they facilitate the orderly and efficient disposition of the market's milk not used in Class I uses. When producer milk is not needed in the market for Class I use, a provision should be made for its movement to nonpool plants for manufacturing without loss of producer milk status. Provision should also be provided to minimize the inefficient movement of milk solely for pooling purposes. However, it is just as necessary to safeguard against excessive milk supplies becoming associated with the market through the diversion process.

Diverted milk is milk not physically received at a pool plant. However, it is included as a part of the total producer milk receipts of the pool plant causing the milk to be diverted. While diverted milk is not physically received at the pool plant that causes the milk to be diverted, such milk is nevertheless an integral part of the milk supply of the diverting pool plant. If such milk is not part of the integral supply of the diverting plant, then that milk should not, and is not, properly associated with the diverting plant. Therefore, such milk should not be pooled.

Associating more milk than is actually part of the diverting plant's milk supply only serves to reduce the potential blend price paid to all dairy farmers whose milk is part of the pool. Allowing the pooling of milk far in excess of reasonable needs by the absence of diversion limits only provides for association with the market through "paper-reporting" and not by service to the Class I needs of the market. Without a diversion limit, the order's ability to provide for effective performance standards and orderly marketing is weakened.

On the basis of the record, the lack of a diversion limit for producer milk by distributing plants has opened the door for pooling much more milk, and, in theory, an infinite amount of milk on the market. In the specific marketing conditions of Order 30 evidenced by the record of this proceeding, the lack of a diversion limit for producer milk at distributing plants has caused milk to be pooled on the order that cannot be considered reasonably associated with the market.

The diversion limits for pool distributing plants offered by DFA are reasonable, and, in fact, are needed for upholding the purpose of providing for

performance requirements in serving the Class I needs of the market. The order already effectively sets a diversion limit on pool supply plants by requiring these plants to ship 10 percent of their receipts, including diversions, to distributing plants regulated under the order. Therefore, an effective 90 percent limit on the amount of milk that could be diverted has already been established. Accordingly, the specific amendatory wording offered by DFA with respect to pool supply plants is not necessary. However, in the case of pool distributing plants, the order does need specific amendatory language to carry out this intent.

The amendatory language provided by DFA would add other order distributing plants to which cooperative handlers (as described in § 1000.9(c)) may divert milk. DFA claims that this matches the pool supply plant provisions for shipments to a distributing plant. It does do this. However, the amount of milk for which a pool supply plant is able to qualify for pooling is limited to the amount of shipments that are not made on the basis of agreed-upon Class II, Class III, and Class IV utilization. Milk that moves directly from the farm to another order pool distributing plant that is allocated to Class I becomes producer milk in the receiving order. This milk cannot be used for qualification, and the cooperative handler (as described in § 1000.9(c)) does not receive a qualification credit on direct shipped milk for Class I. A cooperative handler should not receive qualification for milk it ships to distributing plants if such milk is only to be used for pool qualification purposes and is delivered on an agreed upon Class II, Class III, or Class IV use of milk.

In exceptions to the tentative final decision, DFA asserted that the amendatory language they offered is integral to the establishment of appropriate diversion limits. Despite DFA's exception, the record strongly supported a 90 percent diversion limit without location differentiation for pool distributing plants. A 90 percent diversion limit adopted on an interim basis is serving as an effective means of identifying those producers, producer milk, and handlers who should benefit from marketwide pooling of milk on the Upper Midwest order. Adopting this standard on a permanent basis should continue its effectiveness.

4. Changing the Rate of Partial Payment

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 103 percent, published in the hearing notice as Proposal 5, is not adopted. Therefore, the partial payment rate should remain as currently provided for by the order—at the lowest class price for the prior month.

Both DFA and NFO were among those who supported increasing the minimum partial or advance payment due producers and cooperatives from the prior month's lowest class price to 103 percent of the prior month's lowest class price. A representative of DFA testified that since the inception of Federal order reform, the percentage of a producer's pay price, as measured by dividing the statistical uniform price by the prior month's Class III price, has declined from 95 percent to 91 percent in comparison to this relationship prior to reform. The witness presented detailed analysis supporting their position that the relative reduction in the partial payment is a trend that is having a significant negative impact on dairy farmers' cash flow. According to analysis presented, DFA concluded that using 103 percent of the lowest class price of the previous month would return the balance between the partial payment and final payment to the same relative level as prior to Federal order reform. The change should not have significant impact on handlers required to make minimum payments, said the witness.

A witness for the Wisconsin Cheese Makers Association (WCMA) testified in opposition to changing the rate of the minimum partial payment provision. The witness testified that the WCMA represents 25 supply plants on the Upper Midwest order and that increasing the required minimum payment would be a burden to their member plants because they would need to borrow more money to meet the partial payment. Requiring a larger partial payment, testified the WCMA witness, would require increased borrowing and thus increased costs for the plants. The witness explained that since the partial payment is only a minimum payment, plants may pay more if they desire to, but not all plants pay more than the minimum partial payment. According to the witness, the reduction in the percent of the prior month's Class III price as a percent of the statistical uniform price is a short-term phenomena and that, over time, the relationship would move back to the higher percentage that occurred prior to Federal order reform.

It is difficult to determine whether or not there is a trend occurring, as DFA maintains, that would be corrected or mitigated by changing the rate of the