

**DEPARTMENT OF AGRICULTURE****Agricultural Marketing Service****7 CFR Parts 1000, 1005, 1006 and 1007**

[AMS-DA-07-0059; AO-388-A22; AO-356-A43 and AO-366-A51; Docket No. DA-07-03-A]

**Milk in the Appalachian, Florida and Southeast Marketing Areas; Tentative Decision and Opportunity To File Written Exceptions on Proposed Amendments to Tentative Marketing Agreements and to Orders**

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule; tentative partial decision.

**SUMMARY:** This decision proposes to adopt on an interim final and emergency basis proposals that adjust the Class I pricing surface of the Appalachian, Southeast and Florida Federal milk marketing orders. In addition, this decision proposes to amend certain features of the diversion limit, touch-base standards and transportation credit provisions for the Appalachian and Southeast Federal milk marketing orders. Other proposals seeking to increase the maximum administrative assessment for the Appalachian, Florida and Southeast marketing orders is addressed in a separate decision. This decision requires determining if producers approve the issuance of the amended orders on an interim basis.

**DATES:** Comments must be submitted on or before April 29, 2008.

**ADDRESSES:** Comments (six copies) should be filed with the Hearing Clerk, United States Department of Agriculture, STOP 9200-Room 1031, 1400 Independence Avenue, SW., Washington, DC, 20250-1031. You may send your comments by the electronic process available at the Federal eRulemaking portal: <http://www.regulations.gov> or by submitting comments to [amsdairycomments@usda.gov](mailto:amsdairycomments@usda.gov). Reference should be made to the title of the action and docket number.

**FOR FURTHER INFORMATION CONTACT:**

Gino M. Tosi, Associate Deputy Administrator, USDA/AMS/Dairy Programs, Order Formulation and Enforcement Branches, STOP 0231-Room 2971, 1400 Independence Avenue, SW., Washington, DC 20250-0231, (202) 690-1366, e-mail address: [gino.tosi@usda.gov](mailto:gino.tosi@usda.gov).

**SUPPLEMENTARY INFORMATION:** This tentative decision proposes to

immediately adopt amendments that: (1) Adjust the Class I pricing surface in each county within the geographical marketing areas of the Appalachian, Florida and Southeast marketing orders; (2) make diversion limit standards identical for the Appalachian and Southeast orders: 25 percent of deliveries to pool plants during the months of January, February, July, August, September, October and November, and 35 percent in the months of March, April, May, June and December; (3) reduce touch-base standards to one day each month for the Appalachian and Southeast orders; (4) add January and February as months when transportation credits are paid for the Appalachian and Southeast orders; (5) provide for the payment of transportation credits in the Appalachian and Southeast orders for full loads of supplemental milk; (6) provide more flexibility in the qualification requirements for supplemental milk producers to receive transportation credits for the Appalachian and Southeast orders; and (7) increase the monthly transportation credit assessment from \$0.20 per cwt to \$0.30 per cwt in the Southeast order. Other proposals seeking to increase the maximum administrative assessment for the Appalachian, Florida and Southeast orders are addressed in a separate decision.

This administrative action is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

The amendments to the rules proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have a retroactive effect. If adopted, the proposed amendments would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674) (AMAA), provides that administrative proceedings must be exhausted before parties may file suit in court. Under Section 608c(15)(A) of the AMAA, any handler subject to an order may request modification or exemption from such order by filing with the Department of Agriculture (Department) a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Department would rule on the petition. The AMAA provides that

the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Department's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

**Regulatory Flexibility Act and Paperwork Reduction Act**

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601-612), the Agricultural Marketing Service has considered the economic impact of this action on small entities and has certified that this proposed rule would not have a significant economic impact on a substantial number of small entities. For the purpose of the Regulatory Flexibility Act, a dairy farm is considered a small business if it has an annual gross revenue of less than \$750,000, and a dairy products manufacturer is a small business if it has fewer than 500 employees.

For the purposes of determining which dairy farms are small businesses, the \$750,000 per year criterion was used to establish a marketing guideline of 500,000 pounds per month. Although this guideline does not factor in additional monies that may be received by dairy producers, it should be an inclusive standard for most small dairy farmers. For purposes of determining a handler's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500-employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees.

During May 2007, the time of the hearing, there were 2,744 dairy farmers pooled on the Appalachian order (Order 5). For the Southeast order (Order 7), 2,924 dairy farmers were pooled on the order. For the Florida order (Order 6), 283 dairy farmers were pooled on the order. Of these, 2,612 dairy farmers in Order 5 (or 95.2 percent), 2,739 dairy farmers in Order 7 (or 94 percent) and 153 dairy farmers in Order 6 (or 54 percent) were considered small businesses.

During May 2007, there were a total of 36 plants associated with the Appalachian order (22 fully regulated plants, 10 partially regulated plants, 2 producer-handlers and 2 exempt plants). A total of 55 plants were associated with the Southeast order (33 fully regulated plants, 9 partially regulated plants, 2 producer-handlers and 11 exempt plants). A total of 25 plants were associated with the Florida order (13 fully regulated plants, 9 partially regulated plants, 1 producer-

handler and 2 exempt plants). The number of plants meeting small business criteria under the Appalachian, Southeast and Florida orders were 8 (or 22.2 percent), 18 (or 32.7 percent) and 11 (or 44 percent), respectively.

The amendments proposed to be adopted in this tentative decision provide for the temporary increase in Class I prices in the Appalachian, Southeast and Florida orders. The minimum Class I prices of the three southeastern orders, as with all other Federal milk marketing orders, are set by using the higher of an advance Class III or Class IV price as determined by the Department and adding a location-specific differential, referred to as a Class I differential. Minimum Class I prices charged to regulated handlers are applied uniformly to both large and small entities. Class I price increases would generate higher marketwide pool values in all three southeastern orders by approximately \$18–19 million for the Appalachian order, approximately \$17.5 million for the Southeast order and approximately \$38 million for the Florida order. In estimating the impact on minimum prices paid to dairy farmers, blend prices will increase by approximately \$0.26 per cwt for the Appalachian order, approximately \$0.64 per cwt for the Southeast order, and \$1.19 per cwt to \$1.22 per cwt for the Florida order.

The amendments proposed to be adopted revise the Appalachian and Southeast orders by making the diversion limit standards for the orders identical—not to exceed 25 percent for the months of January, February, and July through November, and 35 percent for the months of March through June and for the month of December. Currently, the diversion limit standards of the Appalachian order for pool plants and cooperatives acting as handlers are not to exceed 25 percent for the months of July through November, and January and February; and 40 percent for the months of December and March through June. For the Southeast order, the current diversion limit standards for pool plants and cooperatives acting as handlers are not to exceed 33 percent during the months of July through December, and 50 percent in the months of January through June.

In addition, the proposed amendments for adoption would make identical the daily touch-base standards of at least one day's milk production each month of a dairy farmer in the Appalachian and Southeast orders. Currently, the Appalachian order has a touch-base standard of 6 days' production in any month of July through December and not less than 2

days' production for the months of January through June. Currently, the Southeast order has a touch-base standard of not less than 10 days' production for the months of July through December and not less than 4 days' production for the months of January through June.

The changes proposed for adoption to the pooling standards serve to revise established criteria that determine those producers, producer milk and plants that have a reasonable association with and are consistently serving the fluid needs of the Appalachian and Southeast marketing areas. Criteria for pooling are established on the basis of performance levels that are considered adequate to meet the Class I needs and determine those producers who are eligible to share in the revenue that arises from the classified pricing of milk. The criteria for pooling are established without regard to the size of any dairy industry or entity. The criteria established are applied in an identical fashion to both large and small businesses and do not have any different economic impact on small entities as opposed to large entities.

The proposed amendments for adoption add January and February to the months of July through December as months when transportation credits may be paid for the Appalachian and Southeast orders to those handlers who incur the costs of providing supplemental milk. The amendments also expand the payment of transportation credits for supplemental milk to include the full load of milk rather than the calculated Class I portion and provide more flexibility in the qualification requirements for supplemental milk producers to receive transportation credits for the Appalachian and Southeast orders. In addition, only the maximum monthly transportation credit assessment for the Southeast order is increased from the current \$0.20 per cwt to \$0.30 per cwt on all milk assigned to Class I use. The transportation credit provisions are applicable only to Appalachian and Southeast orders and are applied in an identical fashion to both large and small businesses and will not have any different impact on those businesses producing manufactured milk products. The changes will not have a significant economic impact on a substantial number of small entities.

The Agricultural Marketing Service is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to

Government information and services, and for other purposes.

This notice does not require additional information collection that needs clearance by the Office of Management and Budget (OMB) beyond currently approved information collection. The primary sources of data used to complete the forms are routinely used in most business transactions. Forms require only a minimal amount of information that can be supplied without data processing equipment or a trained statistical staff. Thus, the information collection and reporting burden is relatively small. Requiring the same reports for all handlers does not significantly disadvantage any handler that is smaller than the industry average.

Interested parties were invited to submit comments on the probable regulatory and informational impact of this proposed rule on small entities.

#### **Prior Documents in This Proceeding**

*Notice of Hearing:* Issued May 3, 2007; published May 8, 2007 (72 FR 25986).

#### **Preliminary Statement**

Notice is hereby given of the filing with the Hearing Clerk of this tentative partial decision with respect to proposed amendments to the tentative marketing agreements and the orders regulating the handling of milk in the Appalachian and Southeast marketing areas. This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act (AMAA) and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900).

Interested parties may file written exceptions to this decision with the Hearing Clerk, U.S. Department of Agriculture, STOP 9200—Room 1031, 1400 Independence Avenue, SW., Washington DC 20250–9200, by April 29, 2008. Six (6) copies of these exceptions should be filed. All written submissions made pursuant to this tentative partial decision will be made available for public inspection at the Office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The hearing notice specifically invited interested persons to present evidence concerning the probable regulatory and informational impact of the proposals on small businesses.

A public hearing was held upon proposed amendments to the marketing agreement and the orders regulating the handling of milk in the Appalachian, Southeast, and Florida marketing areas. The hearing was held, pursuant to the

provisions of the Agricultural Marketing Agreement Act of 1937 (AMAA), as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

The proposed amendments set forth below are based on the record of a public hearing held in Tampa, Florida, on May 21–23, 2007, pursuant to a notice of hearing issued May 3, 2007, published May 8, 2007 (72 FR 25986).

The material issues on the record of hearing relate to:

1. Class I Prices—adjustments and pricing surface.
2. Producer milk—diversion limit and touch-base standards.
3. Transportation Credit Balancing Fund Provisions.
4. Determination of whether emergency marketing conditions warrant the omission of a recommended decision and an opportunity to file written exceptions.

### Findings and Conclusions

The proposals, published in the hearing notice as Proposals 1, 2 and 3, seeking to make various changes to the Appalachian, Southeast and Florida milk marketing orders (hereinafter these marketing areas and marketing orders will collectively be referred to as the southeastern marketing areas or orders as the case may be) are adopted immediately in this tentative decision. These adopted proposals form an integrated package of changes that simultaneously provide for: (1) The temporary increase in Class I prices and the Class I pricing surface in the three southeastern orders, and (2) for the Appalachian and Southeast orders—(a) more stringent diversion limit standards, (b) lower touch-base standards, and (c) other specific changes to both orders' transportation credit balancing fund provisions.

While the summary of testimony is presented as three separate material issues, the discussion and findings on all three material issues are provided after the summary of briefs.

The minimum Class I prices of the three southeastern orders, as with all other Federal milk marketing orders, are set by using the higher of an advance Class III or Class IV price as determined by the Department and adding a location-specific differential, referred to as a Class I differential. The Class I differentials are location-specific by county and parish for all States of the 48 contiguous United States. These Class I differentials are specified in 7 CFR Section 1000.52.

The diversion limit standards of the Appalachian and Southeast milk orders are described in the *Producer milk* definition of the orders (7 CFR 1005.13 and 7 CFR 1007.13, respectively) and specify the maximum volume of milk that may be diverted to a nonpool plant and have the diverted milk pooled and priced under each respective order. Currently, the diversion limit standards of the Appalachian order for cooperatives acting as handlers (and pool plant operators that are not cooperatives) are not to exceed 25 percent for the months of July through November, and January and February and 40 percent for the months of December and March through June. For the Southeast order, the current diversion limit standards for cooperatives acting as handlers (and pool plant operators who are not cooperatives) are not to exceed 33 percent during the months of July through December and 50 percent in the months of January through June. As adopted herein, the diversion limit standards of both orders are made identical—not to exceed 25 percent for the months of January, February, and July through November and 35 percent for the months of March through June and for the month of December. This represents a modest tightening of the diversion limit standards for the Appalachian order and a significant tightening of the diversion limit standards for the Southeast order.

This decision adopts identical daily touch-base standards of at least one-day's milk production per month of a dairy farmer in order for the dairy farmer to be considered a producer under each respective order's *Producer milk* definition and for making a producer's milk eligible for diversion to nonpool plants. This represents a significant change from the current touch-base standards for the Appalachian order of 6 days' production in any month of July through December and not less than 2 days' production for the months of January through June, and for the Southeast order of not less than 10 days' production for the months of July through December and not less than 4 days' production for the months of January through June.

Currently, only the Appalachian and Southeast orders of the three southeastern orders contain provisions for a transportation credit to partially offset handler costs of transporting supplemental milk for Class I use during certain times of the year from producers located outside of the two marketing areas. These producers are not part of the regular and consistent supply of

Class I milk to the Appalachian and Southeast marketing areas.

Transportation credit balancing funds were first established for the Appalachian and Southeast (or predecessor orders) in 1996 and operate independently of the producer-settlement funds. A monthly per hundredweight (cwt) assessment is charged to Class I handlers on a year-round basis on the volume of milk assigned to Class I use at a rate of \$0.15 per cwt in the Appalachian order and \$0.20 per cwt in the Southeast order. Payments from the transportation credit balancing fund are made during the months of July through December (when milk supplies are tightest) in both orders to those handlers who incur the costs of providing supplemental milk. The transportation credit balancing fund provisions of the two orders were amended on an interim basis in December 2006 (71 FR 62377).

Changes adopted in this decision to the Appalachian and Southeast order transportation credit balancing fund provisions: (1) Extend the number of months in which transportation credit balancing funds may be paid from the current months of July through December to include the months of January and February, with the option of the month of June if requested, and approved by the Market Administrator; (2) expand the payment of transportation credits for supplemental milk to include the entire load of milk rather than the current calculated Class I utilization; (3) provide more flexibility in the qualification requirements for supplemental milk producers to receive transportation credits; and (4) increases the monthly transportation credit assessment rate from the current \$0.20 per cwt to \$0.30 per cwt. for the Southeast order.

### 1. Class I Prices—Adjustments and Pricing Surface

A witness appearing on behalf of the proponents, Dairy Cooperative Marketing Association (DCMA), testified in support of temporarily increasing minimum Class I prices in the three southeastern milk marketing orders. The witness testified that all elements of their proposals for the three southeastern milk orders are offered as a "single package" to address the needs of all the southeastern region's dairy industry stake holders and represents an integrated package of needed changes. It was the opinion of the witness that the supply of milk for fluid use in the southeastern marketing areas is threatened and that several simultaneous changes to the provisions of the three orders are needed to attract

a sufficient quantity of milk to meet the fluid needs of the markets.

According to the witness, DCMA consists of nine Capper-Volstead cooperative members that include Arkansas Dairy Cooperative Association, Damascus, AR; Cooperative Milk Producers Association, Inc., Blackstone, VA; Dairy Farmers of America (DFA), Kansas City, MO; Dairymen's Marketing Cooperative, Inc., Mt. Grove, MO; Lone Star Milk Producers, Inc., Windthorst, TX; Maryland & Virginia Milk Producers Cooperative Association, Inc. (MD-VA), Reston, VA; Select Milk Producers, Inc., Artesia, NM; Southeast Milk, Inc. (SMI), Belleview, FL; and Zia Milk Producers, Inc., Roswell, NM. The witness testified that each of the DCMA members marketed and pooled their milk in one or more of the three southeastern milk marketing order areas during 2006.

According to the DCMA witness, during December 2006 members of DCMA pooled more than 87 percent of cooperative and non-member producer milk on the Appalachian order, more than 87 percent of the cooperative and non-member producer milk on the Southeast order, and more than 96 percent of the cooperative and non-member producer milk on the Florida order.

The DCMA witness testified that their proposed changes to the Class I pricing surface better reflect the actual cost of transporting milk and the pattern in which milk produced outside of the marketing areas moves into the three marketing areas. According to the witness, the cost of procuring milk for fluid use for the southeast region has increased because local production is in serious decline and continues to decline at an increasing rate. The witness noted that the three southeastern orders collectively import more than one third of the region's milk supply during the most deficit months of the year to cover the fluid milk needs. Fluid demand exceeds 300 million pounds of milk each month in the three southeastern marketing areas, the witness said. The witness characterized the economic situation of the dairy industry in the region as dire and marketing conditions as disorderly. The witness asserted that producers currently experience inequitable prices for their milk, that handlers have unequal costs, and that there are insufficient economic incentives for the procurement of milk supplies.

The DCMA witness characterized the southeastern region as having rapid population growth that is expected to continue to increase. The witness indicated that the U.S. Census Bureau

population growth estimates for the States of Alabama, Arkansas, Florida, Georgia, Mississippi, Louisiana, North Carolina, South Carolina, and Tennessee have collectively increased by 8.4 percent from 2000 to 2006, while the population of the U.S. as a whole increased 6.2 percent.

Using Market Administrator statistics on in-area milk production for the three southeastern marketing order areas, the DCMA witness contrasted population growth to the region's milk production to demonstrate that the dairy industry is in serious decline. The witness said that during 2006 milk was delivered into the three southeastern orders from at least 27 states. The witness explained that local in-area milk production (milk produced within the geographic marketing area boundaries) during 2006 for both the Appalachian and Southeast areas supplied the entire Class I needs of these two areas only four months of the year and Florida's in-state milk production was insufficient to supply the Class I needs in every month of 2006. The witness estimated that the Appalachian and Southeast marketing areas are able to supply only about 76 percent of the milk necessary to meet Class I, Class II and reserve demands, while in Florida, in-area producers are able to supply only about 66 percent of the milk necessary to meet Class I and reserve demands on an annual basis.

The DCMA witness asserted that minimum Federal order Class I prices have increased only twice in the past 22 years—as a part of the 1985 Farm Bill and as part of Federal milk order reform made effective in January 2000. Specifically, the witness related that the Class I differential for Atlanta increased from \$2.30 to \$3.08 per cwt in 1985 but was increased by only two cents to \$3.10 in January 2000. According to the witness, under Federal order reform, some Class I differentials in distant milk surplus areas were increased more than in the milk-deficit regions of the southeast.

The DCMA witness also was of the opinion that changes to the Class I pricing surface resulted in a flattened pricing surface and narrowed producer blend price differences between orders. The witness testified that such changes diminished the economic incentives to move milk within the southeastern marketing areas as well as to move milk into the deficit southeastern region of the U.S. According to the witness, minimum Class I price differences and returns to producers are simply not high enough to move milk into these deficit markets without substantial over-order prices.

The DCMA witness explained that since 1986 diesel fuel prices have risen more rapidly than Class I differentials (and thus Class I prices) in the southeastern region. Relying on data of the Energy Information Administration (EIA) of the U.S. Department of Energy, the witness noted that the U.S. average diesel fuel price increased by 187 percent from 1986 and 2006 (from \$0.94 per gallon to \$2.07 per gallon). The witness compared this increase to the 0.64 percent or \$0.02 per cwt increase in the Class I differential for Atlanta since 1986.

The DCMA witness testified that the slope of the Class I pricing surface should be changed to progressively increase Class I prices as milk moves to the east and south within the three marketing areas. The witness was of the opinion that changing the slope of the Class I price surface inside the three marketing areas in this way would better encourage milk to move within the two marketing areas. Additionally, the witness was of the opinion that pricing signals to producers would direct their supplies to the most milk-deficit portions of the regions. In this regard, the witness added that simply raising Class I prices uniformly throughout the three order marketing areas would not result in improved pricing signals to producers.

The DCMA witness explained that in developing the proposed Class I price structure and adjustments to current Class I price levels, DCMA considered two alternatives. According to the witness, in one pricing alternative all the Class I price relationships between plants in the three southeastern orders could be retained. However, under this alternative, the witness explained, the Class I prices for the plants on the outer edges of the Appalachian and Southeast marketing area boundaries would increase considerably, resulting in significant changes in price relationships between those plants and plants regulated by adjoining Federal orders.

The DCMA witness said that alternatively the slope of the Class I price surface within the three marketing areas could be altered to minimize plant-to-plant Class I price relationship changes. The witness testified that this approach would result in a pricing structure that better reflected actual milk movements from within and outside of the marketing areas. The witness pointed out that in either approach, plant-to-plant price relationships would change and that the method they chose provided the least change in plant-to-plant price relationships.

The DCMA witness also stressed the need for the proposed Class I price adjustments to remain aligned with the Class I price structure in adjoining marketing areas. The witness said that the proposed Class I pricing surface outside of the three southeastern marketing areas would not be changed. The witness was of the opinion that the proposed Class I price adjustments are reasonably aligned with Class I prices in adjoining marketing areas. Through an analysis of plant-to-plant movements of packaged milk, the witness indicated that DCMA's proposed Class I pricing structure provides pricing adjustments that are reasonable and improves the slope of the Class I pricing surface.

The DCMA witness explained that both a most distant demand point and several supply locations were identified in developing the proposed Class I pricing surface. The witness indicated that Miami, Florida, was identified as the most distant demand point in the southeastern region from any alternative milk supply area. According to the witness, the five possible major supply locations and their distance to Miami were also identified. These locations included: Wayne County, Ohio; Jasper County, Indiana; Hopkins County, Texas; Lancaster County, Pennsylvania; and Franklin County, Pennsylvania.

The witness indicated that of the five possible supply sources, Wayne County, Ohio, was determined as the least cost supply location with a calculated Class I price adjustment of \$6.14 per cwt at Miami, Florida. The witness testified that Class I price adjustments were progressively adjusted to smaller and smaller Class I price adjustment values as plant location values in the southeastern region were adjusted by their distance from the supply locations.

According to the DCMA witness, the plant-to-plant cost of moving packaged milk was analyzed. The witness testified that successive movements of packaged fluid milk from the outer edge of the Appalachian and Southeast marketing areas towards Miami, Florida, were analyzed. As with bulk milk movements, the witness explained, at each plant location the minimum cost of moving packaged milk was determined and compared to the minimum costs of moving bulk milk. The witness concluded that the bulk and plant-to-plant packaged milk movements were very similar.

The DCMA witness testified that the calculated Class I pricing adjustments were re-adjusted so that plants located near to each other would have a similar Class I price adjustment. The witness also acknowledged that the proposed pricing structure could not maintain

current Class I price relationships because the current Class I price surface does not reflect actual hauling costs. According to the witness, the west-to-east proposed increase in Class I price adjustments reflects higher hauling costs.

The DCMA witness characterized the proposed adjustments to the calculated Class I price surface as being the result of "smoothing." The witness explained that deviation from the calculated Class I price adjustment represents factoring best professional judgment in assuring that plants located near each other have the same Class I price adjustment and the need to maintain alignment with Class I prices in adjoining marketing areas.

According to the DCMA witness, the proposed adjustments for plant locations regulated by the Appalachian order would increase in the range of \$0.10 per cwt to \$1.00 per cwt; plants regulated by the Southeast order would increase in the range of \$0.10 per cwt to \$1.15 per cwt; and between \$1.30 per cwt to \$1.70 per cwt for plants regulated by the Florida order.

Relying on Market Administrator data, the DCMA witness concluded that the proposed Class I price increases would generate higher marketwide pool values in all three southeastern orders. According to the witness, the estimated annual increase of the Appalachian order pool for 2004, 2005 and 2006 resulting from the proposed Class I prices alone would have totaled \$19.3 million, \$18.6 million and \$18.3 million, respectively. For the Southeast order, the witness said, the annual pool value increase would have totaled \$16.8 million, \$17.1 million and \$17.7 million, respectively. For the Florida order, the witness said, the annual increase in pool value would have totaled \$36.4 million, \$38.3 million and \$39.2 million, respectively. In estimating the impact on minimum prices paid to dairy farmers, the witness said that average annual minimum uniform prices (as announced at current locations) would have been increased by approximately \$0.25 per cwt to \$0.26 per cwt for the Appalachian order, approximately \$0.64 per cwt higher for the Southeast order, and \$1.19 per cwt to \$1.22 per cwt higher for the Florida order.

The DCMA witness acknowledged and explained that changes in Class I price relationships between plant locations resulting from any changed Class I price surface would be inevitable. In this regard, the witness asserted that the price adjustment differences between plant locations under the DCMA proposal would not

exceed the cost of moving Class I fluid milk products and therefore would not result in the uneconomic movement of milk.

The DCMA witness concluded by testifying that orderly marketing would be improved with a Class I price structure that is more reflective of the true hauling costs to supply the milk-deficit southeastern region. The witness urged that the proposed Class I price adjustments and pricing surface be adopted immediately. The witness reiterated that the proposed Class I price adjustments be temporarily adopted pending any system-wide changes to the Class I differential level and pricing surface.

A total of 11 dairy farmers whose milk is pooled on at least one of the three southeastern orders testified at the hearing in support of DCMA's package of proposals but suggested modifications on how the package should be changed.

Three of the dairy farmers who testified were cooperative members of MD-VA, DFA and SMI (cooperatives previously described as member organizations of DCMA). These witnesses testified that the dairy industry in the southeastern region is in need of changes to the three marketing orders to respond to the decline in regional milk production. Their testimonies joined that of the DCMA witness supporting the DCMA package of proposals.

A dairy farmer whose milk is marketed on the Southeast and Florida marketing orders testified on behalf of Cobblestone Milk Producers, Inc. and Mountain View Farms of Virginia in limited support of the Class I price surface feature of DCMA's package of proposals provided certain modifications were made. This witness agreed with proponents concerning the decline of milk production in the southeastern region and the need to import supplemental milk supplies. According to the witness, lower producer pay prices in the southeastern region have led to rapidly declining production that is not being replaced by new farms or the expansion of existing farms. It was the opinion of this witness that the projected increases in producer pay prices arising from the proposed increase in Class I prices would not be enough to affect production trends in the southeastern region. The witness expressed concern that Class I processors would demand their over-order premiums be lowered to compensate for increases in the three orders' minimum Class I prices. The witness requested that the proposed Class I price adjustments for the

Appalachian and Southeast marketing areas be increased but did not offer specific amounts.

Four dairy farmers from North Carolina testified in general support of the proposed Class I price adjustments. Three of the witnesses represented organizations that were part of the Southeast Producers Steering Committee (SPSC), whose members include North Carolina Dairy Producers Association, Georgia Milk Producers Association, Upper South Milk Producers Association, Kentucky Dairy Development Council (KDDC), North Carolina Department of Agriculture and Consumer Services, and the North Carolina Farm Bureau Federation. All four witnesses were of the opinion that the proposed Class I price adjustments would not be adequate to increase prices paid to dairy farmers in order to stem the decline of milk production in the southeastern region. The witnesses were of the opinion that additional efforts should be made to enhance local milk production. One dairy farmer witness testifying on behalf of the KDDC, said that other adjustments needed to be made to the proposed Class I price adjustments because Kentucky dairy farmers would benefit less from the proposed adjustments than dairy farmers located in the Southeast and Florida marketing areas. Another North Carolina dairy farmer witness offered the opinion that Appalachian producers would need to receive at least a \$1.00 to \$1.50 per cwt increase in their mailbox price to stimulate local milk production. A third North Carolina dairy farmer witness stressed that more emphasis should be made to seek solutions that would increase local milk production rather than seeking better ways to import milk into the region from locations located far from the region. Another dairy farmer, also from North Carolina, expressed concern that over-order premiums might fall because of the proposed Class I prices adjustments. In addition, a SPSC witness, as well as others, called for a comprehensive study to identify problems and alternatives to the proposals regarding the decline of milk production in the southeastern region.

A witness appearing on behalf of National Dairy Holdings (NDH) testified in limited opposition of the Class I price adjustments of the DCMA package. According to the witness, NDH is a national dairy processor with facilities located throughout the country. The witness indicated no specific opposition to Class I price increases but conditioned such increases on the fair distribution of the revenue to producers in the southeastern region. While the

witness testified that NDH has no difficulty procuring milk for its plants located in the southeastern region, the witness acknowledged other testimony that identified milk production problems of the southeastern region and that the region's producers are in need of relief. The witness expressed concern on how the proposals would impact NDH's wholesale packaged milk sales. The witness also suggested that issues discussed at the hearing could be addressed by utilizing a point-of-sale or plant-point pricing method.

A witness appearing on behalf of the Kroger Company (Kroger) testified in opposition to the proposed Class I price adjustments for the Appalachian and Southeast marketing orders. According to the witness, Kroger operates four fluid distributing plants that are regulated by the Appalachian and Southeast orders (Winchester Farms, Westover Dairy, Heritage Farms Dairy and Centennial Farms Dairy). The opinion of the witness was that the proposed Class I price adjustments would disrupt traditional pricing relationships which were established by the 1985 Farm Bill and would generate competitive discrepancies with adjoining markets.

The Kroger witness testified that the proposed Class I price adjustments would place their plants in an unacceptable competitive situation with each other in the Appalachian and Southeast marketing areas. Specifically, the witness requested that the Class I price adjustments for Louisville, Kentucky, Lynchburg, Virginia, Murfreesboro, Tennessee, and Atlanta, Georgia be unchanged. The witness also indicated that Winchester, Kentucky be increased by no more than \$0.10 per cwt in order to maintain competitive milk procurement price relationships with other Kroger plants located in the Cincinnati area of the Mideast milk marketing areas. The witness opposed the proponent's position that the proposal be considered on an emergency basis.

A witness appearing on behalf of the Milk Industry Foundation (MIF) testified in opposition to the Class I price adjustments of DCMA's package of proposals. According to the witness, MIF is a member organization of the International Dairy Foods Association (IDFA) which represents 115 member companies that market approximately 85 percent of the nation's milk and dairy products. The witness testified that the proposed changes are not necessary because an adequate of supply of milk already exists for the Appalachian, Southeast and Florida orders. The witness stated that because

the Federal order system is a national market, milk is available from anywhere in the country. The witness noted over-order premiums compensate those entities who supply the deficit regions. The witness was of the opinion that declining milk production in the southeastern region has been occurring for many years and as such does not warrant increasing Class I prices and accordingly does not warrant the Department to take emergency action.

The MIF witness was of the opinion that Class I prices cannot be changed in one region of the country without affecting milk marketing in other regions. The witness said that the proposed Class I price adjustments would change the competitive relationships between plants located within and outside of the three southeastern marketing areas. The witness argued that Class I sales would be discouraged because all Class I plants in the three marketing areas would be required to pay a higher price for milk. The witness requested a comprehensive analysis of the national market before adopting the proposed Class I price adjustments.

A witness appearing on behalf of Dean Foods Company (Dean) testified in opposition to the proposed Class I price adjustments of DCMA's package of proposals. The witness agreed with testimony of other witnesses indicating the deficit milk supply conditions in the three southeastern marketing areas and the need to increase prices paid to the region's local dairy farmers.

The Dean witness was of the opinion that a comprehensive analysis of the potential impacts of changing the Class I price surface in the three marketing areas had not been conducted. The witness characterized DCMA's package of proposals as containing "too many moving parts" that makes it difficult to evaluate the impact of the proposed Class I price adjustment features. The witness was of the opinion that Appalachian and Southeast marketing area dairy farmers are in greater need of higher producer prices than dairy farmers in the Florida marketing area and noted that the proposed Class I price adjustments would benefit Appalachian and Southeast marketing area producers the least. In this regard, the witness worried that the prices received by dairy farmers across the southeastern region would be unfairly distributed if the proposed Class I price changes were adopted.

The Dean witness was of the opinion that the proposed Class I pricing surface and Class I pricing adjustments would change how milk moves to and between plants located within and outside of the

three marketing areas. The Dean witness testified that the assumptions used by DCMA in laying the foundation for the proposed Class I price adjustments and Class I pricing structure are flawed. In this regard, the witness noted that the USDA 1999 Final Decision on Federal milk order reform indicated that the cost of hauling raw milk was linear, [cost increases as the distance milk is transported increases at a constant rate] but that the cost of hauling packaged milk was nonlinear. Accordingly, the Dean witness argued that the proposed Class I pricing changes could give distributing plants located outside the marketing area's incentive to change their route dispositions in order to become regulated on one of the three marketing orders.

According to the Dean witness, distributing plants located outside the area could become regulated at the expense of plants located in the area. As a result, the witness concluded, Class I revenue generated by out-of-area distributing plants would be returned to dairy farmers located far outside of the three southeastern marketing areas. The witness offered that perhaps the greatest beneficiaries of the proposed Class I pricing changes could be producers located as far away as Illinois and Indiana.

The Dean witness also criticized reliance on Wooster, Ohio (located in Wayne County) as a supply area for the southeastern region and being a basis of DCMA's proposed Class I price adjustments. The witness noted while DCMA identifies Wooster, Ohio, as a supply area for the southeastern region, a Pennsylvania State proceeding held in 2006 indicated the testimony of a DFA witness saying that milk was not available in the Wooster, Ohio, area to supply Pennsylvania.

The Dean witness offered nine modifications to DCMA's package of proposals. The witness explained that their proposed modifications to the package of proposals would not seek to provide higher Class I prices or change the Class I pricing surface. According to the witness, the Appalachian and Southeast marketing orders pooling provisions should be identical to those of the Florida marketing order (discussed further below).

## *2. Producer Milk—Diversion Limit and Touch-Base Standards*

The DCMA witness testified that the diversion limit standards of the Appalachian and Southeast orders should be identical. According to the witness, diversion to nonpool plants allows for the pooling of milk that is transferred from pool to nonpool plants

without milk first needing to be delivered to pool plants. In setting a reasonable limit, the witness was of the opinion that diversion limit standards must take into account reserve supplies needed for Class I use, the balancing needs of the markets and the seasonality of production.

The DCMA witness testified that milk-deficit Federal orders tend to have lower diversion limit standards relative to orders with substantial reserve milk supplies. The witness testified that while the Appalachian and Southeast order diversion limit standards generally reflect their milk-deficit marketing conditions, they are in need of tightening. Specifically, the DCMA witness proposed that the diversion limit standards be 25 percent during the months of January, February, and July through November, and 35 percent for the months of March through June and for the month of December.

In explaining the analysis conducted in arriving at proposed new diversion limit standards for the Appalachian and Southeast orders, the DCMA witness testified that daily producer milk receipts by distributing plants regulated by the two orders from January 2004 through December 2006 were compared to the day of the month when daily receipts at distributing plants were greatest. The witness explained that the differences between the day of greatest receipts and each day's actual receipts for the month at distributing plants were then summed. According to the witness, the resulting value represents the amount of additional milk that would need to be pooled as reserve milk to be able to satisfy Class I demands at a distributing plant on the day of their greatest need. The witness stated that the analysis showed approximately 12 to 13 percent of additional milk volume of distributing plant receipts would be the minimum reserve necessary to cover daily fluctuations in the demand for fluid milk at distributing plants. On an annual basis, the minimum average reserve needed as calculated is about 22 percent, the witness said.

The witness explained that the proposed diversion limit standards of 25 percent for both orders for the months of January, February, and July through November, are based on the analysis described above and the need to provide for an additional reserve in the tightest supply months. The witness explained that the proposed diversion limit standards of 35 percent for the months of March through June and the month of December accommodate seasonal fluctuations in supply. The witness explained that this standard would allow regular producers who supply the

Class I needs of the marketing areas in the tight supply months to pool all of their additional production in the flush months and accommodate the regular decline in Class I sales that occurs when schools close for the summer months. According to the witness, Class I plants also temporarily close or severely limit their receiving operations over the holiday period in December, resulting in substantial surplus milk.

Relying on Market Administrator data, the DCMA witness estimated that the impact on the minimum uniform prices from lowering the diversion limit standards alone would raise blend prices approximately \$0.02 per cwt and \$0.07 per cwt annually for the Appalachian and Southeast orders, respectively. The witness indicated that a change in the blend price for any particular producer would vary based on the location the producer's milk was delivered.

The DCMA witness stressed that the proposed changes in the two orders' diversion limit standards do not fully capture the true volume of milk likely to no longer be eligible to be pooled on the two orders. The witness explained that if the volume of producer milk delivered to pool plants were the same each month, then the volume of producer milk no longer pooled and priced by the orders would drop about 6.67 percent and 29.72 percent on the Appalachian and Southeast orders, respectively. The witness further explained that lowering the diversion limit standards should also result in increasing minimum order blend prices paid to producers. According to the witness, proposed changes to the diversion limit standards of the order, together with expected increases in revenue arising from Class I price adjustments and Class I pricing surface, will likely encourage local milk production, the movement of milk into the region from distant sources, or some combination of both.

The DCMA witness testified that the package of proposals also includes the lowering of the touch-base standards of the Appalachian and Southeast orders and makes them identical. According to the witness, this would discourage uneconomic movements of milk and offer operational savings for cooperatives supplying the Class I needs of the marketing area.

The DCMA witness explained that because of the continuing decline in local milk production, an increasing amount of milk that is produced further from the marketing areas is becoming a regular part of the supply of Class I milk. The witness characterized this milk of distant dairy farmers as the



reserve supply needed for balancing the Class I needs of the two marketing areas.

The DCMA witness was of the opinion that reducing the touch-base standard to one day each month in both orders is necessary for the efficient pooling of reserve supplies. In this regard, the witness testified that lowering the touch-base standard would no longer result in displacing local milk already supplying the markets' Class I needs with the milk produced farther from the marketing areas that is shipped just to meet pooling standards.

According to the witness, requiring producers to deliver more days to pool plants when the milk is not truly needed results in increasing the cost of supplying the Class I needs of the two markets.

Eight dairy farmers testified in general support of DCMA's proposed changes to the two orders' diversion limit and touch-base standards. Some were of the general opinion that the regular reserve supply for the Appalachian and Southeast marketing areas should be pooled when not delivered to Class I plants. While all supported the pooling of milk that regularly supplies the Class I needs of the two marketing areas, several dairy farmers expressed caution that the diversion limits were not being lowered enough while touch-base standards were needlessly being lowered. According to these witnesses, this would encourage pooling milk not truly supplying the markets and result in lower blend prices paid to local dairy farmers. The dairy farmers testifying supported adopting needed changes on an emergency basis.

A witness representing Dean testified that the proposed changes to the diversion limit and touch-base standards would not be sufficient to deter the uneconomic movement of milk or to enhance producer prices in the Appalachian and Southeast marketing areas. According to the witness, current diversion limit standards are in excess of the markets' balancing needs and should be lowered immediately.

The Dean witness characterized the Appalachian and Southeast orders as being very similar to the Florida order in terms of milk consumption and production. The witness was of the opinion that the pooling standards of the Florida order work well and pooling milk not consistently serving the market's Class I needs rarely occurs. The witness specifically proposed that diversion limit standards be changed to 15 percent for the months of December through February, 20 percent for the months of March through June, and 10 percent for the months of July through November.

According to the Dean witness, dairy farmers will receive higher blend prices if diversion limits are made even lower than proposed by DCMA. Relying on Market Administrator data, the witness stated that January 2004 had shown the highest "need" of reserve milk during 2004–2006 for the Southeast order at approximately 22 percent of total milk pooled on the order. The witness contrasted this with October 2004 where the "needed" reserve was approximately 7 percent. In this regard, the witness suggested that diversion limits could be reduced below that proposed by DCMA. According to the witness, if made too low, the Market Administrator has the authority to change the diversion limit standards if warranted.

The Dean witness opposed DCMA's proposed one day per month touch-base standard if DCMA's proposed diversion limit standards are adopted. The witness was of the opinion that inefficient movements of milk would result if the one day touch-base standard were adopted. However, the witness indicated support for a two-day touch-base standard provided the diversion limit standards of the Florida order are simultaneously adopted.

The Dean witness explained that when touch-base requirements are low, locally produced milk can be displaced by milk located far from the marketing area because it needs to be transported to the marketing area fewer times to qualify for pooling and receiving a higher blend price. The witness was of the opinion that only milk that is necessary to serve the Class I needs of the market should be delivered to that market. According to the witness, reserve milk supplies located far from the market should not be pooled on the market if they are not delivered to the market.

### *3. Transportation Credit Provisions*

The DCMA witness explained that on September 1, 2006, the Secretary issued a tentative partial decision (71 FR 54118) which amended the transportation credit provisions of the Appalachian and Southeast orders. Specifically, the witness noted that the decision established a fuel cost adjuster to determine a variable mileage rate factor used to compute the payout of transportation credits and higher maximum transportation credit assessments on Class I milk for the Appalachian and Southeast orders. To accompany these adopted changes that were implemented on December 1, 2006 (71 FR 62377), the witness proposed four other changes to the transportation credit provisions that are part of the

package of changes proposed for the two southeastern orders.

According to the DCMA witness, the four additional changes to the transportation credit provisions for both orders include: (1) Extending the months during which transportation credits may be paid to include the months of January and February with June being an optional transportation credit payment month; (2) expanding the payment of transportation credits to apply to the full load of milk, rather than the current calculated Class I portion of milk loads; (3) providing greater flexibility for supplemental milk producers to be eligible to receive transportation credit payments; and (4) raising the maximum monthly transportation credit assessment for the Southeast order from the current \$0.20 per cwt to \$0.30 per cwt.

According to the DCMA witness, the need for supplemental milk in the Appalachian and Southeast orders has increased during the months of January and February. The witness offered evidence showing that during January 2004 through December 2006, January and February are months with increasing Class I use in the Appalachian and Southeast orders. The witness claimed that during January and February, local milk is not sufficient to supply the Class I milk needs. It is this combination of Class I need and available local producer supplies that show January and February as being more like the current transportation credit payment months of July through December than the flush months of March through May, the witness concluded. According to the witness, adding January and February as transportation credit payment months would give suppliers of supplemental milk an opportunity to recoup a portion of the hauling costs to supply the marketing areas with milk for fluid use.

In explaining this proposed change, the DCMA witness said, in part, current transportation credit payment provisions result in reimbursements that are much lower than the real cost of hauling. The witness explained that the cost of hauling milk to Class I plants is the same regardless of the plant's use or the Class I utilization of the market. The witness was of the opinion that expanding the transportation credit payments to full loads of milk delivered only to pool distributing plants would enhance orderly marketing and better ensure that sufficient supplemental milk is delivered to pool distributing plants. The witness supported continuing transportation credit payments on supplemental milk deliveries to pool distributing plants only.



The DCMA witness proposed simplifying the process for determining milk that is eligible for transportation credit payments. The witness noted that currently, a dairy farm must be located outside either the Appalachian or the Southeast marketing areas, the dairy farmer must not meet the *Producer* provision under the two orders during more than two of the immediately preceding months of February through May and not more than 50 percent of the milk production of the dairy farmer during those two months, in aggregate, can be received as producer milk under the order during those two months.

The DCMA witness was of the opinion that the requirements for transportation credit payment eligibility should be changed to provide flexibility in meeting the criteria while limiting the receipt of transportation credits to only that milk which is truly supplemental and that is not part of the consistent and regular supply of milk serving the Class I needs of the two markets. Specifically, the witness proposed that: (1) A dairy farmer must not meet the *Producer* definition on the orders in more than 45 of the 92 days in the months March through May or (2) must have less than 50 percent of a producer's milk pooled on the orders during those three months combined. The witness argued that limiting the producer association with the orders to no more than half the time or to no more than half their milk production is sufficient in identifying a dairy farmer who is a supplemental supplier of milk to the marketing areas. These changes, the witness asserted, offer substantial cost savings to cooperatives that bear the burden of sourcing and supplying the supplemental milk needs of the markets from distant locations.

The DCMA witness testified that the maximum transportation credit assessment for the Southeast order needs to be increased from the current \$0.20 per cwt to \$0.30 per cwt given the proposed expansion of the transportation credit payments on full loads of milk to Class I distributing plants regulated by the two orders. The witness was of the opinion that otherwise the current assessment rate would be insufficient to cover anticipated shortfalls in the transportation credit fund.

While the DCMA witness proposed a higher transportation credit assessment rate for the Southeast order only, the witness projected that the proposed changes to Class I prices and the Class I pricing surface in the Appalachian and Southeast orders would lessen payments from the transportation credit balancing funds. The witness explained

this may occur because the greater positive differences (increases) from adopting the proposed Class I price adjustments and Class I pricing surface. The witness did acknowledge that the additions of the months of January and February as transportation credit payment months would tend to increase transportation credit payouts.

Relying on Market Administrator data, the DCMA witness estimated that for the months of July through December 2006 the Southeast order transportation credit payments would total \$15,704,872 as a result of their proposal, and January and February 2006 payments would total approximately \$2,900,000, resulting in an overall amount of approximately \$18,604,872. At the current assessment rate of \$0.20 per cwt, the witness concluded that transportation credit balancing funds would not have been sufficient to pay all transportation credit claims in 2006. At the proposed \$0.30 per cwt assessment rate, the witness was of the opinion that sufficient revenue would be generated to satisfy all transportation credit claims.

Relying on Market Administrator data for the Appalachian order, the witness said that during July of 2006 through January of 2007, transportation credit payments would have totaled approximately \$4,073,312. According to the witness the month February 2006 would have included a payment of approximately \$313,000, bringing the total estimated transportation credit total payments to \$4,383,312. According to the witness, the current \$0.15 per cwt assessment rate for the Appalachian order would have been sufficient and no increase in the assessment rate would be needed.

The DCMA witness supported continuing to provide for Market Administrator discretion in setting the transportation credit assessment rates at less than the maximum allowed. The witness was of the opinion that doing so will prevent the needless collection of revenue when the transportation credit balancing funds are sufficient to meet claims.

Four dairy farmers testified in support of DCMA's proposal to provide additional flexibility in determining which producers are supplying supplemental milk to the two marketing areas. As with other features of DCMA's proposals, these dairy farmers support adoption of these proposed changes on an emergency basis.

The witness appearing on behalf of Dean expressed support for adding the months of January and February as transportation credit payment months for the Appalachian and Southeast

orders on the condition that tighter diversion limits be adopted. The witness said these months should be considered as payment-eligible months because the tentative decision implemented in December 2006 eliminated the ability to divert milk on loads of milk seeking the payment of a transportation credit. However, the Dean witness opposed expanding transportation credit payment eligibility to entire loads of milk. In this regard, the witness expressed concern that this would essentially result in Class I sales funding the supply of supplemental milk in lower-valued Class II uses.

#### Post-Hearing Briefs

Post-hearing briefs were filed by: Dairy Cooperative Marketing Association (DCMA), Southeast Producers Steering Committee (SPSC), Dean Foods Company and National Dairy Holdings (Dean/NDH), and the Milk Industry Foundation.

The DCMA post-hearing brief reiterated support for adoption of their proposals on an emergency basis. The brief stated that their proposals were developed as an integrated package and that the package of proposals better assures the Appalachian, Southeast and Florida milk orders' ability to attract a sufficient quantity of milk for fluid use. The brief said this is accomplished by increasing the Class I prices in the three milk marketing orders, lowering the diversion limit and touch-base day standards, and modifying the transportation credit provisions. The brief reiterated the deficit milk supply situation in the southeastern region. The brief emphasized that procuring milk for Class I use for the region is a major challenge that is borne disproportionately by cooperative associations and their dairy farmer members.

The DCMA brief explained that the Class I price adjustments and changes to the Class I pricing surface in the Appalachian, Southeast and Florida orders would accomplish two needed results. According to the brief, the changes would likely encourage local producers to increase milk production and provide pricing incentives for producers located outside the marketing areas to deliver milk to the three marketing areas for fluid use.

The DCMA brief stated that while plant price relationships would inevitably change as a result of their proposals, the Class I prices proposed are strikingly similar to plant price differences adopted in the 1999 Order Reform Final Rule. The brief indicated that this is proof that their method of developing the proposed Class I price

adjustments and Class I pricing surface is valid and meets the requirements of a regulated Class I price system.

The DCMA brief commented on the method used in developing their Class I pricing proposals as deviating from a model developed by Cornell University that was relied upon in the adoption of current Class I pricing structure. According to the brief, arguments regarding the cost differences between assembly and plant-to-plant milk deliveries as a direct function of the distance transported and not being the same as packaged milk movements when greater than 900 miles does not invalidate their proposed pricing structure. The brief characterized the proposed Class I pricing portion of the package of their proposals as containing all the elements used by the Department in the current Class I pricing structure. The brief also argued that DCMA's proposals generates Class I pricing relationships consistent with the objectives of marketing orders in assuring an adequate supply of milk for the three marketing areas, not encouraging the uneconomic movement of milk; and being reflective of the supply and demand conditions for milk within the marketing areas.

The DCMA brief explained that lowering the diversion limit standards in the Appalachian and Southeast orders would serve to enhance producer blend prices while the decrease in the producer touch-base days would act to encourage more efficient milk movements and offer cost savings to milk suppliers. The brief maintained that while some witnesses testified in support of even lower (tighter) diversion limits, no evidence to support such changes was presented. The brief added that diversion limit standards in both orders will effectively be much lower than the proposed standards because no diversions may accompany supplemental milk pooled on the order which receives a transportation credit payment. The brief also noted that DCMA's proposal for extending transportation credit pay-out months also effectively lowers pooling milk by diversion.

The DCMA brief stated that extending the payment of transportation credits to include the months of January and February and to the entire loads of milk would offer the suppliers of supplemental milk greater assurance that more of the actual costs of hauling milk to the southeastern region would be covered. According to the brief, simplifying the criteria that determines if producers are supplemental suppliers of milk to the marketing areas offers both administrative and marketing

efficiencies. Finally, the brief explained that the proposed increase in the transportation credit assessment for the Southeast milk order would ensure that transportation credit payment claims would be adequate to meet anticipated needs.

The DCMA brief maintained that the record contains abundant evidence supporting the existence of emergency conditions in the three marketing areas affecting the ability to adequately supply fluid milk. The brief stressed that providing adjustments for higher Class I prices and modifying the Class I pricing surface, if even on a temporary basis, is necessary immediately. The brief indicated that milk production in the Southeastern states during the first quarter of 2007 declined at a faster rate than the annual decline during 2006 and 2005, and that this increasing rate of milk production decline cannot be ignored. The brief reiterated the continuing increases in hauling costs and the longer distances milk must be shipped to provide sufficient supplies to meet fluid demands.

A post-hearing brief was submitted on behalf of SPSC. The SPSC brief indicated support for the Class I portions of DCMA's proposals but was not fully supportive of the proposed diversion limit and touch-base standards and transportation credit provisions. The brief agreed with the DCMA proposals to increase Class I prices in the Appalachian, Southeast and Florida orders on an emergency basis because it would promote milk production within the three marketing areas by enhancing local producer income—the primary suppliers of fluid milk for the three southeastern markets. The SPSC brief did express concern that even with expected higher blend prices to producers accruing from higher Class I prices, the current trend of lower local milk production may not be slowed.

The SPSC brief indicated support to lower (tighten) diversion limit standards in the Appalachian and Southeast orders. However, the brief expressed the opinion that diversion limit standards for both orders could and should be reduced more than that proposed by the DCMA. The SPSC brief asserted that record evidence had not determined the appropriate base and reserve milk supply volumes or the proper diversion limit and touch-base standards for the Appalachian and Southeast orders or who should bear the costs of maintaining reserve milk supplies for the Southeastern region.

The SPSC brief was of the opinion that record evidence also did not clearly indicate that the volume of milk pooled on the order for other than Class I use

actually would be lowered by adopting DCMA's proposed diversion limit and touch-base standards. According to their brief, the majority of the producer milk removed under the DCMA proposals would occur in only a few months of the flush production months for the Appalachian order and in the months of January and February for the Southeast order. The brief expressed concern that milk could actually be added in both orders in the other months due to the decrease in touch-base days. The brief maintained that in-area producers and those who provide the primary supply of milk for fluid use on a regular basis should receive the greatest share of revenue attributable to that service. According to the brief, pooling more milk than needed would only continue to depress the income of the Southeastern producers.

The SPSC brief found agreement with Dean's testimony that proposed a more aggressive lowering of diversion limit standards for the Appalachian and Southeast orders. The brief agreed with Dean's position that tighter diversion limits would sharply reduce the volumes of pooled milk in the two orders and the relative impact on producer pay prices would be more substantial. The brief indicated support for continuing to provide discretionary authority for the Market Administrators to tighten diversion limits and raise touch-base standards if necessary and without the need to resort to the formal rulemaking process.

The SPSC brief indicated conditioned support for DCMA's proposed changes to the transportation credit provisions of the Appalachian and Southeast orders. However, the brief questioned the proper role of transportation credits in both marketing orders. The brief requested the Department consider the proper distinction between true pooled reserve milk and supplemental milk.

A post-hearing brief submitted on behalf of Dean Foods Company and National Dairy Holdings, LLC (hereinafter referred to as Dean/NDH) agreed that the Southeastern region of the U.S. is a deficit milk production region and that the deficit is growing. The brief said that dairy farmers who regularly and consistently supply milk to fluid milk plants in the southeast region should be appropriately compensated for their raw milk and receive the blend price of the order they supply. However, the brief argued that adopting the proposed Class I price adjustments and the Class I price surface proposals is not supported by record evidence or by rule of law and should be denied. While the Dean/NDH brief expressed agreement that long-

term problems exist regarding the viability of the southeastern region dairy industry, it doubted that correcting problems that have prevailed for some 25 years could be solved overnight through emergency rulemaking.

According to the Dean/NDH brief, there is no evidence of an emergency that would warrant adopting the Class I price proposals by the omission of a Recommended Decision. To the extent that conditions warrant the need to rely on milk orders to return higher prices to dairy farmers, the brief asserted that an alternative method of returning higher prices can be achieved by simply lowering diversion limit standards of the orders.

The Dean/NDH brief noted that Dean and NDH operate several fluid milk processing plants in the Southeastern region and noted that processors opposed the Class I price adjustments and Class I pricing surface changes. The brief argued that such changes may result in unintended consequences which may make the situation in the southeastern region worse.

According to the Dean/NDH brief, adopting changes to Class I pricing may result in plants located outside the Appalachian and Southeast marketing areas gaining incentives to direct their fluid milk sales in the marketing areas and become pooled on those orders. The brief argued that while plants may gain in blend price changes by altering where they become pooled, the price surface may not change for their competitors. The brief also asserted that since January 2000, Class I prices were intentionally linked nationwide as part of Federal milk order reform and concluded that any change in Class I differentials or the Class I pricing surface, even at one price location, would change the economic incentive nationwide to serve that location. The brief contended, therefore that the entire national Class I price surface needs to be considered.

According to the Dean/NDH brief, DCMA's Class I price proposals fail to rely on accepted economic models and fail to follow the Department's established policies for making adjustments to the Class I price surface. Specifically, the brief argued that the economic calculations failed to take into consideration "shadow pricing," which the brief characterized as how a market could react to changes such that an additional price change would alter distribution. The brief also argued that the Class I price proposals fail to calculate unique prices for each location by considering relevant reserve supply areas and fail to account for differences

in raw milk movements versus packaged milk movements.

According to the Dean/NDH brief, the rationale for setting a target price for Miami, Florida, and then backing off that price and "smoothing" the result is arbitrary and capricious. The brief contended that by determining Class I prices in this way, such methodology was not applied uniformly and thus cannot meet the standards of the Administrative Procedure Act. In addition, the brief noted that no evidence or economic data backs up the "smoothing" process as described by DCMA testimony.

The Dean/NDH brief asserted that Wooster, Ohio, should not be identified as a supply area because it has never been relied upon as any kind of basing point for pricing milk and doing so now would be specifically contrary to testimony given at a Pennsylvania State hearing for a recent State of Pennsylvania's rulemaking. Accordingly, the brief contended that DCMA's entire Class I pricing proposals should be rejected.

According to the Dean/NDH brief, although the Class I price changes sought are "temporary," competitive impacts of such changes can be long-term and result in permanent harm to Class I handlers. The brief asserted that any decision should be considered permanent unless it has a specific sunset provision. According to the brief, no specific sunset provision had been proposed or discussed in the hearing record.

The Dean/NDH brief pointed out that the dairy industry is also currently experiencing record high Class I prices for milk and high blend prices paid to dairy farmers obviate the need for emergency action. The brief noted that the May 2007 uniform price for Fulton County, Georgia, was \$18.37 per cwt. According to the brief, this price is \$1.37 per cwt higher than April 2007 and is \$5.83 per cwt, or 45.3 percent, higher than in May 2006. The brief also noted that the Class I price for June 2007 at Fulton County was \$1.92 per cwt higher than May 2007, and the July 2007 price increased by \$3.07 per cwt. The brief indicated that even a proponent witness acknowledged that such higher prices are likely to continue through the fall 2007.

The Dean/NDH brief agreed that diversion limit standards for the Appalachian and Southeast orders should be lowered on an emergency basis and made identical to those of the Florida milk order. The brief indicated that the Florida milk order currently functions well by having lower diversion limit standards and this has

supported the prevailing over-order premiums. The brief opined that because of the order's tight pooling provisions, the need for transportation credits and the need for holding numerous formal rulemaking hearings has been avoided. According to the brief, the Florida order's tight diversion limit standards have continually assisted that order in retaining strong blend prices paid to dairy farmers and attracting sufficient amounts of milk supplies.

The Dean/NDH brief asserted that pool revenues should be shared among only those producers who truly and regularly serve the Class I market and that diversion limit standards of the Appalachian and Southeast orders are not adequately identifying those true and regular suppliers. The brief asserted that both orders can be made more effective by requiring a genuine association of a milk supply with the market as intended by the AMAA.

The Dean/NDH brief indicated that if Dean's proposal for adopting the diversion limit standards of the Florida order for the Appalachian and Southeast orders is adopted, Dean would support the DCMA's one-day per month touch-base proposals. As they do not view DCMA's diversion limit standards as being any change at all, they oppose any change to the touch-base standards of the Appalachian and Southeast orders.

The Dean/NDH brief opposed the expansion of the payment of transportation credits to include the entire load of milk and stated that they should only be paid on Class I milk as currently provided under the Appalachian and Southeast orders. The brief expressed concern that adopting the proposed changes would create the wrong economic incentives. The brief noted that suppliers of milk to a Class I plant with a higher than market average of Class II use would be receiving a larger economic benefit than Class I plants with below market average Class II use. According to the brief, this would be contrary to assuring equal minimum milk prices among similar handlers.

The Dean/NDH brief was of the opinion that transportation credits have been a key factor in contributing to the decline of the dairy industry in the southeastern region. In this regard, the brief noted the proponents acknowledgement that in some cases current touch-base provisions in conjunction with transportation credits cause inefficient movements of milk. The brief asserted that transportation credits, not touch-base standards, give rise to inefficient movements of milk.

A post-hearing brief by MIF reiterated their opposition to adopting DCMA's proposals and asserted the absence of emergency marketing conditions that warrant emergency action. The brief noted awareness of declining milk production in the southeastern region but indicated this is not a sufficient basis for the adoption of the proposals on an emergency basis. The brief further argued that no emergency exists to warrant adoption of the proposals because the trends of declining milk production in the region and rising fuel costs have existed for many years.

The MIF brief stressed that the key purpose of the Federal milk marketing order program is to ensure an adequate supply of milk for Class I needs. In this regard their brief noted that no witnesses testified on the inability to procure milk for Class I use. The brief reiterated that in a survey of their membership conducted before the hearing, no member indicated difficulty securing milk for Class I needs in the three southeastern marketing areas. The brief also mentioned that over-order premiums are paid by Class I handlers to secure milk for fluid use and the proponents testified that current over-order premiums currently offset higher fuel costs.

The MIF brief noted that some southeastern dairy producers who testified at the hearing also participated in a herd-removal program called Cooperatives Working Together (CWT). In this regard, the brief cited this as an example that the concern for declining milk production in the southeastern region is misplaced.

The MIF brief asserted Class I sales would suffer if higher Class I prices are adopted because higher costs will increase wholesale costs and result in higher retail prices paid by consumers. The brief noted that the current, general structure of Class I location differentials has been in place for 22 years and that milk bottlers have made significant investments in plants and equipment during this time.

According to the MIF brief, plants could be disadvantaged in the marketplace solely because of increases in the Class I price relative to the Class I price of its competitors. The brief argued that a half-penny difference per gallon could result in lost customers for a distributing plant and that a 2.5 cent increase is enough to lose a supermarket account. The brief asserted that increasing a Class I price by 10 cents (\$0.0086 per gallon) could yield dire results for a Class I plant. The brief indicated that an unexpected consequence could be that plants distant to the three orders could become

associated with one of the three orders due to differences between transportation costs and increased Class I prices resulting in out-of-area plants taking away sales from in-area plants.

The MIF brief said that a comprehensive study and analysis on a national scale of all potential consequences and on demand for packaged milk was needed before any changes to Class I pricing are adopted. The brief reasserted the opinion that Class I prices could not be changed in the southeastern region alone because it changes marketing conditions in all marketing areas.

#### Discussion and Findings

The record of this proceeding reveals that for many years milk production has been declining in the southeastern region and supplying the region with supplemental milk has demanded the sourcing of milk supplies from ever farther distances from the marketing areas. Not only has the decline in milk production been in absolute terms, but when balanced with population increases, milk production in the region has failed to satisfy fluid demands year-round.

At issue in this proceeding is consideration of proposed changes to the Appalachian, Southeast, and Florida milk marketing orders aimed at assuring an adequate supply of milk for fluid use in the southeastern region of the U.S. As proposed by DCMA, the proposals are an integrated package of amendments to the three marketing orders that seek simultaneous changes with the aim of providing incentives for assuring a reliable supply of milk for fluid use. The package of proposals integrates: higher regulated minimum prices for Class I milk, changes to assure that the revenue accruing from higher minimum Class I prices will be shared with those producers who regularly and consistently serve the Class I needs of the region, cost savings for entities who have made the commitment to supply the region; and flexibility and incentives for supplying the Appalachian and Southeast marketing areas with supplemental milk by offsetting the cost of transportation.

#### Class I Prices and Class I Price Surface

Temporary adjustments to the Class I prices for the three southeastern orders are adopted and result in a change to the Class I pricing surface. The changes are specified in the order language. Assuming no other changes to the three southeastern orders, increasing Class I prices will increase the value of each order's marketwide pool. The higher minimum prices will also attract milk to

all locations and increase blend prices for dairy farmers whose milk is pooled on the three southeastern milk marketing orders.

The basic foundation for deriving the temporary adjustments to Class I prices begins with DCMA's identification of *potential* supply areas and reliance on that *potential* supply area to yield the lowest Class I price adjustment based on the farthest point of milk demand. The potential supply point meeting this criteria was Wooster, Ohio, and the farthest demand point was identified as Miami, Florida. After identification of the nearest supply point and the demand point, the distance between these two points was relied upon to determine calculated price adjustments at all other county and parish locations within the marketing area boundaries of the three southeastern orders. The selection of Miami as the farthest point of milk consumption is consistent with recognition in the current pricing structure that Miami is the point with the highest Class I differential resulting in a Class I price designed to attract an adequate supply of milk for Class I uses.

As the proposal indicated, the selection of Wooster, Ohio, (Wayne County) as a supply point is one of several that were considered by the proponents. The selection of Wooster was made after consideration of other supply points because it would represent the least-cost point from which a milk supply could potentially be sourced from locations in the southeastern region. All other supply points considered would have resulted in much higher Class I price adjustments.

The Class I price adjustment at every county and parish location relies upon a mileage rate factor implemented in December 2006. This factor, representing approximately 80 percent of the cost of hauling bulk milk, is further reduced by 80 percent. While this formed DCMA's basic foundation for adjusting Class I prices, it is not the proposed Class I price adjustments at all locations in the southeastern region.

The DCMA's proposed Class I price adjustments differ from those calculated. What the proponent's have described as "smoothing" of the Class I price adjustments is essentially price alignment. In this regard, it is clear that the proposed Class I price adjustments are different from strictly calculated values. The proposed Class I price adjustments provide reasonable alignment with the current Class I price surface beyond the geographical boundaries of the southeastern orders.

Similarly, DCMA's Class I price adjustments differ from calculated

adjustments by adjusting calculated values to correspond to Class I processing plant locations. This establishes pricing zones that are conceptually identical to current pricing zones and assures that similarly situated Class I handlers will have the same minimum regulated Class I prices. Providing similar regulated prices for similarly situated handlers is consistent with the requirements of the AMAA. While conceptually identical, maintaining price alignment with adjoining milk marketing orders together with pricing zones, the proposed Class I price adjustments result in price relationships that are different from those that exist under the current pricing structure. Despite criticism that DCMA's adjustments change price relationships between plants of the same ownership, the key requirement that similarly located plants have similar regulated minimum prices is maintained.

In an effort to examine both the level and the reasonableness of the Class I price adjustments that were zoned and

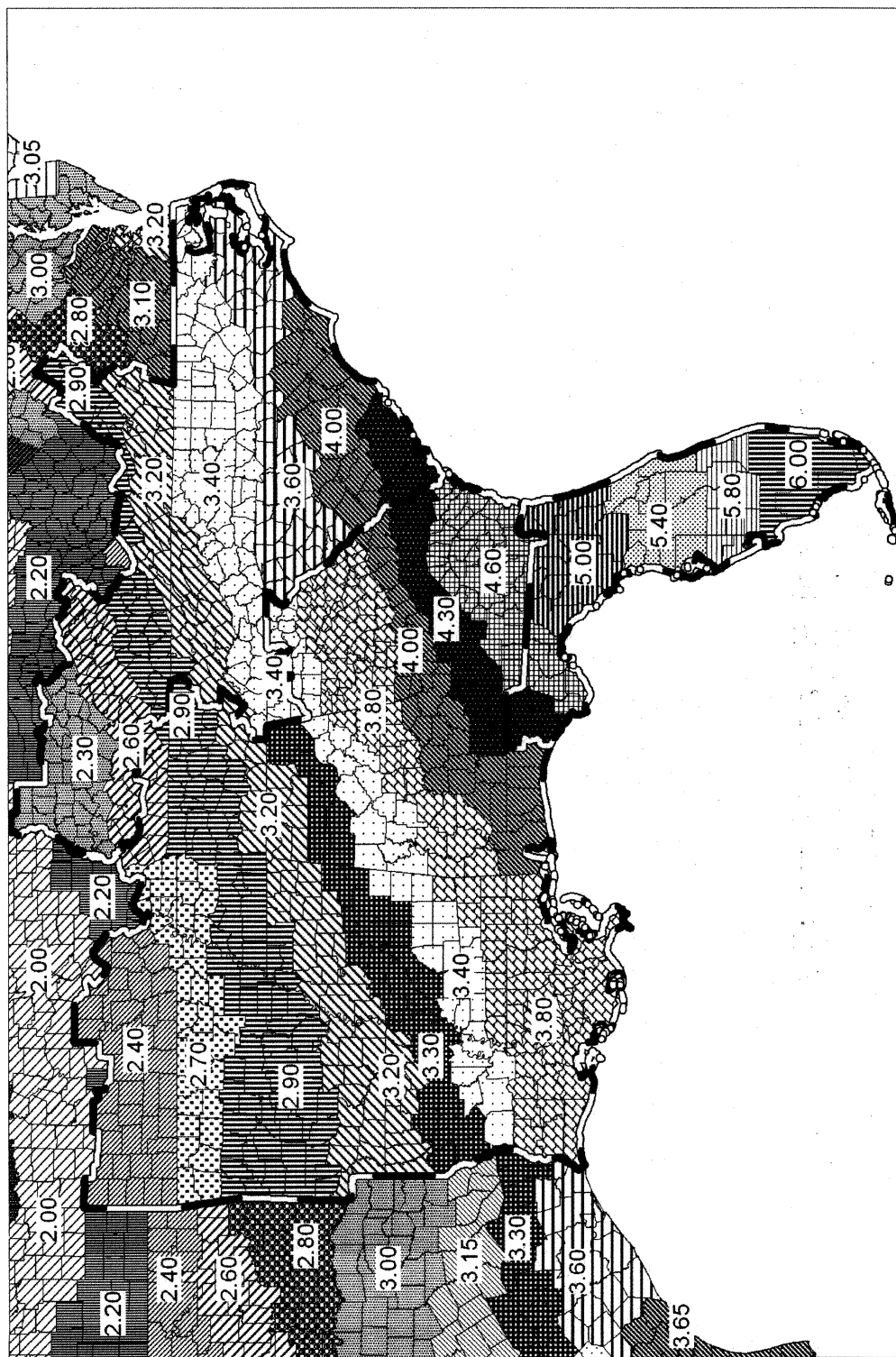
aligned with adjoining orders, DCMA evaluated the cost of shipping packaged milk. According to the record, there are some differences between what the resulting Class I price adjustments would be under the cost analysis of shipping packaged milk. Nevertheless, the similarities between Class I price adjustments as proposed and the cost adjustment analysis of shipping packaged milk are similar. Because the Class I price adjustment at all locations does not exceed the value of milk at alternative locations, in either bulk or packaged form, the Class I price adjustments are reasonable. This method of evaluating the proposed Class I pricing changes by comparison to packaged milk movement forms a rational basis to conclude that the proposed changes to Class I pricing are reasonable. The adopted Class I price adjustments are presented in Figure 1. While the Class I differentials in the southeastern region are not changed in this decision, the Class I price adjustments have been added to the current Class I differentials for

illustrative purposes. Figure 1 provides a graphic presentation of the combined value of Class I differentials plus the adjustment values adopted in this decision.

On the basis of a pricing surface alone, the proposed Class I price adjustments will not likely result in the uneconomic movement of milk as asserted by opponents. The proposed pricing surface better reflects the economic conditions affecting the supply and demand for milk in the three southeastern marketing areas by providing greater pricing incentives indicative of actual milk movements and the cost of supply milk from alternative locations. The adopted Class I price adjustments results in a steeper Class I price surface that correlates with the higher location value fluid milk has in the southeastern region. The location value of milk is higher because of the cost involved in transporting milk to locations in the milk-deficit southeastern region from alternative milk-surplus locations.

### Adjusted Class I Price Surface

Appalachian, Florida, and Southeast Marketing Areas



Opponents to DCMA's Class I price adjustments assert that there is no reason to increase Class I prices because all Class I demands are being met under current order provisions. This decision rejects the assertion of an absence of a rationale to make changes to the pricing provisions of the three orders. The record of this proceeding reveals that it

is the cooperative member organizations of DCMA who supply the majority of the Class I needs of the three marketing areas. In making the commitment to supply the fluid needs of the markets, the supplying cooperatives have largely reduced the burden of Class I handlers to source their supply. Similarly, it is the cooperative organizations that

provide the service of balancing the three southeastern markets.

Opponents to DCMA's Class I price adjustments noted that there is an adequate supply of milk to meet fluid demands. There is an adequate national supply of milk to meet the national demands for fluid milk. However, in the deficit areas of the southeastern

marketing areas, there must be sufficient incentives provided by the orders to encourage the movement of milk from reserve areas to these deficit markets. In this regard, the location value of milk needs to consider local milk supplies, local demand, and transportation costs. The adopted Class I price adjustments should provide the additional incentives needed to offset some of the costs associated with the decreases in local supply, increases in local demand, and increases in transportation costs.

Opponents criticize DCMA's Class I amendments by identifying that other means and methods are available which would return greater revenue to dairy farmers instead of increasing minimum prices. Other changes adopted in this decision will, all other things being equal, tend to increase minimum regulated prices paid to producers. However, these changes are founded on only the very limited improvement gained from changes by lowering the diversion limit standards of the Appalachian and Southeast. These changes provide no additional revenue that also is needed so that Class I demand can be met at all times. In light of the chronic milk deficit conditions of the southeastern region, only higher minimum regulated prices can reasonably generate the additional revenue needed to assure that the Class I needs of the region can be continuously met. According to Market Administrator analyses, the estimated annual increase of the Appalachian order pool for 2004, 2005, and 2006 resulting from DCMA's proposed Class I price adjustments would have been \$19.3 million, \$18.6 million and \$18.3 million respectively. For the Southeast order, the annual pool value increase would have been \$16.8 million, \$17.1 million and \$17.7 million respectively. For the Florida order, the annual increase in pool value would have been \$36.4 million, \$38.3 million, and \$39.2 million, respectively. While alternative methods such as a tightening of pooling standards will, among other things, tend to enhance producer revenue to those producers who regularly and consistently supply the Class I needs of the market, this alone will not establish minimum regulated prices high enough to attract an adequate supply for chronic milk-deficit marketing areas from alternative distant locations.

#### **Diversion Limit and Touch-Base Standards—Appalachian and Southeast Orders**

DCMA's proposed diversion limit and touch-base standards of the Appalachian and Southeast order are immediately adopted. The adopted

changes make the diversion limit and touch-base standards of the two orders identical. Specifically adopted are diversion limit standards of: 25 percent of deliveries to pool plants during the months of January, February, July, August, September, October and November, and 35 percent in the months of March, April, May, June and December. Both order's touch-base standard are amended to require at least one-day's milk production of a producer must be delivered to a pool plant during the month in order for a producer to be eligible to divert to nonpool plants.

Based on record evidence, adoption of a one-day per month touch-base standard for both orders and making the diversion limit standards of both orders identical accomplishes three important pooling standard objectives. Specifically, the changes: (1) Provide a standard necessary to identify producers supplying the markets' Class I needs; (2) provide the criteria to identify the milk of producers who may be eligible for receiving a transportation credit in supplying supplemental milk for Class I use; and (3) allows milk that is part of the milk supply that regularly and consistently services the markets' Class I needs to be pooled on the orders.

Providing for the diversion of milk is a desirable and needed feature of an order because it facilitates the orderly and efficient disposition of milk when not needed for fluid use. When producer milk is not needed by the market for Class I use, some provisions should be made for that milk to be diverted to nonpool plants but still be pooled and priced under the order. The proposed lower diversion adjustments will likely reduce the volume of milk eligible to be pooled by diversion to a significant degree on the Southeast order and less so on the Appalachian order. Assuming all other conditions being equal, the adopted changes in diversion limit standards will result in higher blend prices paid to producers. This is a desirable outcome, especially for the Southeast order where the need to better identify the milk of those producers who regularly and consistently service the Class I needs of the Southeast marketing area is needed most. An examination of the Southeast order's utilization of milk belies the fact that the marketing area is chronically short of in-area milk production to meet the Class I demand of the marketing area. This can only be the result of pooling much more milk on the order than is necessary and that is part of the legitimate reserve supply of milk of the order that is available to service the Class I needs of the market.

The record reveals that according to Market Administrator analyses, the estimated impact on minimum order uniform prices of the proposed diversion limit standards in both orders would have average annual increases in uniform prices of \$0.02 per cwt for the Appalachian order and \$0.07 per hundredweight for the Southeast. Increased blend prices will contribute in providing greater incentives to maintain milk production from current producers and provide greater economic incentives for producers located outside of the marketing area to be regular and consistent suppliers of Class I milk to these two marketing areas.

Milk diverted to nonpool plants is milk not physically received at a pool plant. However, it is included as a part of the total producer milk receipts of the diverting plant or cooperative entity pooling milk for its own account. A diversion limit establishes the amount of producer milk that may be associated with the integral milk supply of a pool plant or cooperative acting in its capacity as a handler. With regard to the pooling issues of the Southeast order, the record reveals that current diversion limits contribute to the pooling of large volumes of milk on the order that does not regularly and consistently service Class I market needs. Therefore, lowering the diversion limit standards is appropriate to better assure that only milk which regularly and consistently services the market's Class I needs is pooled. Associating more milk than is actually part of the legitimate reserve supply available for Class I use unnecessarily reduces the potential blend price paid to dairy farmers who regularly and consistently service the markets' Class I needs. Without reasonable diversion limit standards, the orders' ability to provide for orderly marketing is weakened.

Diversion limit standards that are too high can open the door for pooling more milk on the markets. The record supports concluding that a 33 percent diversion limit for the Southeast order during the months of January through June and 50 percent for the months of July through December has not only resulted in lower blend prices harming local producers, it has resulted in Class I utilization rates that obscure that order as a deficit market.

For the Appalachian and Southeast orders, the record reveals that since the average reserve requirements did not differ greatly over the 36 month period (January 2004 through December 2006), having the same diversion limit standards for both orders are justifiable. In addition, by having identical diversion limits, the blend prices paid



to producers increase as milk is supplied to locations generally in an easterly and southern direction. To the extent that this diversion limit standard may warrant future adjustments, the orders already provide the Market Administrator authority to adjust diversion standards as marketing conditions may warrant. Given the total milk demands of the marketing areas revealed by the record, a minimum of about 12 to 13 percent of monthly pool distributing plant receipts would be needed to meet the minimum daily, weekly, monthly, and seasonal needs, as well as a modest margin for unanticipated changes in the supply and demand relationship for Class I milk needs. Accordingly, the proposed diversion standards for the orders are reasonable.

Touch-base delivery standards define the minimum number of days of milk production each month that a dairy farmer must supply to a pool plant of an order to be associated with that market, and thus qualifying to have their milk pooled by diversion. On the basis of the record evidence, this decision finds reason to support adopting a one-day touch-base standard for both orders. Concern has been voiced by conditional supporters of DCMA's package of proposed amendments for lowering the touch-base standards of the Appalachian and Southeast order because it represents an easing of a feature of the orders' pooling standards at a time when the opposite is needed if producer income in the two orders is to be improved. While this concern might be conceptually valid, the concern does not consider that the volume of milk pooled on the two orders will be appropriately restricted by the adopted diversion limit standards. In part, because the diversion limit standards of the orders are tightened, an easing of the touch-base standard can be made without fear of pooling the milk of producers who are not part of the regular and consistent supply of milk serving the Class I needs of the two marketing areas.

While diversion limit standards are a key feature of the pooling standards of an order for defining the total volume of milk that can be pooled on an order, an argument could be made that perhaps a touch-base standard is not necessary at all if other pooling standard features are appropriately tailored. However, a touch-base standard for the Appalachian and Southeast orders remains a critical feature of both orders because some criteria are needed to identify producers who are suppliers of supplemental milk to the two marketing areas and who

thereby may be eligible for receiving a transportation credit.

Record evidence indicates that by reducing the touch-base days to one day per month, producers, especially cooperative member producers who bear the burden of supplying the vast majority of milk to the southeastern marketing areas, would avoid the cost of delivering their milk to pool plants when not necessarily needed. While a higher touch-base standard tends to support the integrity of the order's performance standards, the current touch-base standards are resulting in the uneconomic movement of milk solely for the purpose of meeting a pooling standard. The current touch-base standards of the two orders too often result in the substitution of local milk with the milk of more distant producers thus displacing the milk of local producers supplying the market. The milk of local producers needlessly incurs the cost of being transported to more distant locations. As a result of the current touch-base standard, hauling and marketing costs are needlessly higher and the supply of milk from distant producers may still not be available to serve the Class I needs of the two marketing areas.

For the reasons discussed above, this decision finds that the current diversion limit standards of the Appalachian and Southeast orders results in the pooling of more milk than can reasonably be considered as actually serving the market's Class I needs and are lowered to those proposed by DCMA. Additionally, the lowering of touch-base days, in light of the tightening of the diversion limit standards, does not compromise the integrity of the orders' pooling standards. Together with the adopted diversion limit standards, a lower touch-base standard for the two orders offers operational cost savings to producers supplying the market with Class I milk while simultaneously providing for better identification of the milk of those producers who regularly and consistently service the markets' Class I needs.

Until December 2006, the transportation credit balancing provisions of the Appalachian and Southeast orders allowed supplemental milk loads to be used as a platform from which to pool additional milk on the order through the diversion process. Official notice is taken of the tentative partial decision concerning milk in the Appalachian and Southeast marketing areas issued September 1, 2006, and published September 13, 2006 (71 FR 54118) and the Interim Rule issued October 19, 2006 and published October 25, 2006 (71 FR 62337). In discussing

the need for revised diversion limit standards for the Appalachian and Southeast orders it is necessary to consider the findings of that decision.

The September 2006 decision referenced above established a zero diversion limit standard on supplemental milk supplies seeking a transportation credit payment. An important finding in that decision regarding diversions associated with supplemental milk was that pooling such diverted milk would provide additional revenue to help offset hauling costs not covered by the transportation credit rates in place for the Appalachian and Southeast orders at that time. The adoption of a variable mileage rate factor that reimburses hauling costs on supplemental milk at a level more reflective of actual costs was found to diminish the need to seek and generate such revenue to offset hauling costs at the expense of the local producers who are regularly and consistently supplying milk for Class I needs. This decision adopts tighter diversion limit standards, especially for the Southeast order. Together with providing for higher Class I prices, tighter diversion limit standards should result in more orderly marketing conditions because the need to pool much more milk on the orders than regularly and consistently serves the Class I needs of the markets needlessly lowers the blend price of producers who regularly and consistently service such Class I needs.

#### **Transportation Credit Balancing Fund Provisions**

Changes to the Appalachian and Southeast order transportation credit balancing fund provisions proposed by DCMA are adopted immediately. Specifically, these changes include: (1) Extending the number of months that transportation credit balancing funds will be paid to include the months of January and February. The month of June will continue to be a month for the payment of transportation credits if requested and approved by the Market Administrator; (2) Expanding the payment of transportation credits for supplemental milk to include the full load of milk; (3) Providing more flexibility in determining the qualification requirements for supplemental milk producers to receive transportation credit payments; and (4) increasing the monthly transportation credit balancing fund assessment rate for the Southeast order from the current \$0.20 per cwt to \$0.30 per cwt.

The transportation credit balancing fund provisions for both orders (and predecessor orders) were established in

1996 as a result of the consistent need to import supplemental milk for fluid use during certain times of the year when local production is not sufficient to meet the fluid needs of the markets. Specifically, the Market Administrator applies a monthly transportation credit balancing fund assessment on all dispositions of Class I milk. The assessment rate is currently \$0.15 per cwt and \$0.20 per cwt for the Appalachian and Southeast orders, respectively. Transportation credit payments are paid from each order's transportation credit balancing fund during the months of July through December to help offset the cost of transporting such supplemental milk for Class I use. The transportation credit balancing funds operate independently from the producer-settlement funds of the two orders. Milk from producers who are located outside of the two marketing areas and who not part of the regular and consistent supply of Class I milk is commonly referred to as supplemental milk.

The record reveals that the seasonal swings in milk production can and does lead to inadequate milk supplies for fluid use in certain months and surplus supplies in other months. In the Appalachian and Southeast orders, the summer and fall (and sometimes winter) months are generally considered those months with inadequate (tight) milk supplies for fluid use, while the spring months are generally characterized as having sufficient supplies of milk for fluid uses. Transportation credits are used as a method to compensate handlers that provide supplemental milk during the tight supply months by offsetting some of the costs of transporting milk to the two marketing areas.

Currently, the payment of transportation credits under the Appalachian and Southeast orders is only made during the months of July through December. A feature of DCMA's proposal seeks to extend such payments to also include the months of January and February. Record evidence demonstrates reliance on supplemental milk supplies for each order's marketing area and the months of January and February showing similar demand for supplemental milk supplies.

Declining local milk production in the southeastern region of the country is well-known and is a chronic problem. Record evidence indicates milk production from producers located in both the Appalachian and Southeast marketing areas (pooled on any order) has continued to decrease since 2004. Specifically, evidence shows that annual milk production pooled on the

Appalachian order has decreased from approximately 3.94 billion pounds in 2004 to about 3.77 billion pounds in 2006. For the Southeast order, milk production has declined from 5.0 billion pounds in 2004 to 4.76 billion pounds in 2006. Furthermore, record evidence illustrates that total milk production in the southeastern states of the U.S. has declined on average almost 2 percent each year since 1986 and has decreased a total of 34.6 percent since 1986—from 18.29 billion pounds in 1986 to 11.96 billion pounds in 2006.

In each of the years of 2004, 2005 and 2006, the months of July through January were deficit in terms of monthly in-area milk production (milk produced within the geographical boundaries of the two marketing areas) being consistently less than the monthly Class I producer milk pooled on the Appalachian and Southeast orders. The in-area deficit in January for both orders for all three years combined totaled 8.4 million pounds. While February in-area milk production for all three years exceeded Class I demands, that surplus decreased from over 44 million pounds in 2004 to just under 14 million pounds in 2006—a decrease of over 68 percent.

Record evidence reveals that the months of January and February are likely to become months during which local in-area milk production will no longer satisfy Class I demands and the Appalachian and Southeast marketing areas will need to increasingly rely on supplemental milk supplies to satisfy Class I demands. Accordingly, expanding the transportation credit payment months to include the months of January and February for the payment of transportation credits is reasonable. June will continue to be an optional month for transportation credit payments, if requested, to be reviewed and authorized by the Market Administrator.

Currently, transportation credits are paid on loads of milk at the lower of the receiving plant's Class I use or the marketwide Class I utilization. DCMA's proposals seek to change these criteria by having the entire load of supplemental milk eligible to receive a transportation credit. The major justification offered by DCMA is that the cost of transporting supplemental milk, regardless of the plant's use of that milk, is the same. This decision finds that a supplier of supplemental milk sources and assembles milk demanded by distributing plants for fluid uses, but no distributing plant disposes 100 percent of its milk receipts as Class I sales. The supplemental milk supplier does not know how a receiving plant will use the supplemental milk it receives. However,

it is reasonable to conclude that plants do not seek supplemental milk supplies without first having the demand for Class I use. In other words, the need for supplemental milk supplies is fueled by Class I demands that cannot be satisfied in the absence of transportation credits. It is unlikely that supplemental milk suppliers would supply full milk loads to Class I plants if the demand for milk was not at least equal to its Class I disposition, even if it has some actual lower-valued use of milk.

The current calculation of transportation credit payments in the Appalachian and Southeast orders contain a number of features to prevent offsetting the full cost of transporting supplemental milk into the marketing areas. It contains features preventing pooling milk on the orders that does not regularly and consistently supply the fluid needs of the two marketing areas. Most important is the feature denying the ability to pool milk by diversion on the basis of supplemental milk deliveries to plants in the two orders. Current transportation credit provisions prohibit pooling diverted milk on the Appalachian and Southeast orders on loads of supplemental milk seeking a transportation credit and this prohibition is continued by its adoption in this decision.

It is too early to know what effect establishing a zero diversion limit standard on supplemental milk loads will have on the total volume of milk pooled because this prohibition was only implemented in December 2006 in both orders. Nevertheless, because supplemental milk can no longer form a basis from which to pool milk through the diversion process, it is reasonable to conclude that the marketwide Class I utilization of the orders will likely increase. However, this improvement alone will not likely result in offsetting the costs incurred by supplemental milk suppliers who both assemble and transport milk to plants regulated by the two orders to satisfy Class I demands.

Record evidence reveals that the Appalachian and Southeast marketing areas experience differing costs in supplying supplemental milk to meet Class I needs that are reflected in the two orders having different transportation credit assessment rates. In recent years the transportation credit reimbursement on claims for the Southeast order have been prorated at greater rates and more often than those of the Appalachian order. As discussed in the September 13, 2006 published tentative decision for the Appalachian and Southeast orders (71 FR 54118), the Appalachian marketing area receives the majority of its supplemental milk

supplies from the northern, Mid-Atlantic States. The Southeast marketing area receives the majority of its supply from the Midwest and southwestern states. The location of supplemental milk supplies for the Southeast marketing area therefore tends to be more distant from the marketing area than that for the Appalachian marketing area.

The need to again raise the monthly transportation credit assessment rate for the Southeast order is in part explained by the continuing need of the Southeast marketing area to reach even farther to source milk supplies to satisfy fluid demands. Additionally, expanding the payment of transportation credits on the entire load of supplemental milk also will likely increase the payment of transportation credit claims. At the same time, payment of transportation credit claims will be offset by the adopted changes to the Class I pricing surface because the calculation for determining payment considers the change in Class I pricing values between the origin of supplemental milk and the point where it is delivered. As discussed above, the need for supplemental milk supplies is fueled by the marketing areas Class I demand.

Precautionary measures are currently provided in the transportation credit provisions such that the rate of assessments beyond actual handler claims is unlikely. The transportation credit provisions provide the Market Administrators the authority to reduce or waive assessments as necessary to maintain sufficient fund balances to pay the transportation credits claims. Therefore, increasing the maximum transportation credit assessment rates will not result in an accumulation of funds beyond what is needed to pay transportation credit claims.

The record supports concluding that local milk production is expected to continue declining within both marketing areas. This will result in an even greater reliance on supplemental milk to meet the fluid milk needs of the markets. Record evidence shows a constant increase in both the volume and distance of supplemental milk supplies, especially for the Southeast marketing area. As such, it is reasonable that future transportation credit claims will increase. In this regard, it is important to prevent exhausting the transportation credit balancing fund before the payment of claims on supplemental milk. Doing so is consistent with the fundamental purposes of the transportation credit provisions.

The adopted increases in Class I prices will likely alter the payout of

transportation credit claims because the differences in origin and delivery point Class I prices are increased. However, adoption of expanded transportation credit payment months to include January and February, as well as payments on the entire load of milk, will tend to offset the payout on transportation credit claims resulting from the adopted changes in Class I pricing.

An increase in the transportation credit assessment for the Appalachian order was not requested because 100 percent of the transportation credit requests were paid in 2006 and in January 2007. Data show that even with adoption of the proposed Class I prices, pooling requirements and transportation credit provisions, the transportation credit assessment of \$0.15 per cwt in the Appalachian order should continue to be sufficient to pay future transportation credit requests.

The record indicates that the actual transportation credits paid in 2006 for the Appalachian order totaled \$3,313,590. Had the current mileage rate factor (MRF) been in effect for all of 2006, transportation credit payments for the Appalachian order would have totaled \$4,433,854, including the actual payment for January 2007 and an estimated payment for February. Analysis suggests that with the current MRF and proposed Class I prices in place, the total transportation credits paid during 2006 would have been about \$456,000 less than the actual total transportation credit payments. Using Market Administrator data with the variable MRF based on 2006 calculated monthly averages (\$0.044 per cwt per ten miles), paying of transportation credit claims on full loads of milk, and the proposed Class I price adjustments, the total transportation credits paid for 2006 in the Appalachian order would have totaled \$4,073,312. This is \$360,000 less than what would have been paid with the MRF and the lower of a plant's Class I use or marketwide Class I utilization. Accordingly, the current \$0.15 assessment rate for the Appalachian order appears to be sufficient to meet all claims even when paying transportation credits on full loads of milk delivered to Class I plants regulated by the order.

The record indicates that for the past three years, the transportation credit balancing fund for the Southeast order has been insufficient to pay transportation credit claims. Record evidence indicates that during 2006, Southeast order transportation credit payments were prorated to 81, 36, 39 and 64 percent of the transportation credit claims for the months of

September, October, November and December, respectively. Such transportation credit claims also have increased in number of pounds and in number of miles. Specifically, the total pounds claimed for the receipt of transportation credits has increased from 374 million pounds for July through December 2000 to 820 million pounds for July through December 2006—an increase of 119 percent.

Increasing the maximum transportation credit assessment for the Southeast order should not result in an unnecessary accumulation of funds. For the Southeast order, the record indicates that transportation credits paid in 2006 would have totaled \$15,704,872 for the month of July through December and would have totaled \$18,604,872 by including the months of January and February. This analysis is based on using the same MRF of \$0.044 as in the Appalachian order analysis, paying of transportation credit claims on full loads of milk, and with the proposed Class I price adjustments. However, the current assessment rate of \$0.20 per cwt falls far short of the total revenue needed to pay all expected transportation credit claims. Even a \$0.30 per cwt assessment may not generate sufficient revenue to meet all expected claims on full loads of supplemental milk. Nevertheless, it is a superior assessment rate than the current rate of \$0.20 per cwt.

Determining those producers eligible to receive a transportation credit on their supplemental milk deliveries requires that the dairy farm must be located outside either the Appalachian or the Southeast marketing areas, the producer must not meet the *producer* definition of the orders during more than 2 of the immediately preceding months of February through May and not more than 50 percent of the milk production of the dairy farmer during those two months, in aggregate, can be received as producer milk under the order during those 2 months.

DCMA has proposed that these requirements for the Appalachian and Southeast orders be made more flexible without substantially changing the identification of milk that is not a regular part of the supply of milk to the two orders. Specifically proposed is that a dairy farmer must not be a producer on the orders of more than 45 of the 92 days in the months March through May or must have less than 50 percent of the producer's milk pooled on the orders during those three months combined.

On the basis of record testimony, this is a reasonable change. Specifically, it represents a change that provides flexibility in identifying supplemental

milk producers and may result in lower operational costs to those producers incurring the costs of supplying supplemental milk to the Appalachian and Southeast marketing areas. Additionally, February is currently a month when a supplemental milk producer may not participate in either order's marketwide pool. Since this decision adopts providing for the month of February as a month in which transportation credit payments can be made, it is necessary to redefine the months in which a producer may not be pooled on either order. Accordingly, changing these features of the orders' transportation credit balancing fund provisions are reasonable.

The adopted changes are detailed in the order language provided below.

#### *4. Determining Whether Emergency Marketing Conditions Exist That Would Warrant Omission of a Recommended Decision and Opportunity To File Written Exceptions*

Evidence presented at the hearing and in post-hearing briefs establishes that several provisions of the three southeastern milk marketing orders are inadequate to meet the objectives of such orders. The inadequacies are contributing to a rapid decline in local milk production relative to population such that the orders are not setting prices that generate sufficient revenue to attract an adequate supply of milk for fluid use from local milk production, from sources outside of the marketing areas or some combination of both. The adopted changes to the Appalachian, Southeast, and Florida orders form an integrated package of simultaneous changes necessary to improve the marketing conditions of the southeastern region that no single change can be reasonably expected to accomplish. By increasing revenue through adjustment of minimum Class I prices, better defining the milk of those producers who consistently and regularly supply the Class I needs of the Appalachian and Southeast marketing areas, and providing for more flexible eligibility criteria and expanded payment of transportation credits to those who supply the Appalachian and Southeast marketing areas with supplemental milk supplies, the southeastern region will be better assured an adequate supply of milk for fluid uses. The record also contains requests by numerous parties that the adopted amendments should be implemented on an emergency basis. Consequently, it is determined that emergency marketing conditions exist that warrant omitting the issuance of a recommended decision. The record

clearly establishes a basis as noted above for amending the orders on an interim basis. The opportunity to file written exceptions to the proposed amended orders remains.

#### **Conforming Changes**

Conforming changes are hereby made to Part 1000.50 Class prices, component prices, and advanced pricing factors. Specifically, the Class I skim milk price and the Class I butterfat price provisions need to be changed in order to conform with the amendments adopted in this proceeding as provided for in Proposal 7 of the hearing notice. The changes to 7 CFR Part 1000.50 (b) and (c) include reference to the adjustments adopted to Class I prices specified in 7 CFR 1005.51(b), 1006.51(b) and 1007.51(b).

In view of these findings, an interim final rule amending the orders will be issued as soon as the procedures to determine the approval of producers are completed.

#### **Rulings on Proposed Findings and Conclusions**

Briefs, 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 claims 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 Appalachian, Florida and Southeast orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

The following findings are hereby made with respect to the aforesaid marketing agreements and orders:

(a) The interim marketing agreements and the orders, 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 with respect to the price of feeds, available supplies of feeds, and other economic conditions that affect market supply and demand for milk in the marketing area, and the minimum prices specified in the interim

marketing agreements and the orders, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, ensure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The interim marketing agreements and the orders, 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, the marketing agreements upon which a hearing have been held.

#### **Interim Marketing Agreement and Interim Order Amending the Order**

Annexed hereto and made a part hereof are two documents—an Interim Marketing Agreement regulating the handling of milk and an Interim Order amending the order regulating the handling of milk in the Appalachian, Florida and Southeast marketing areas, which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered, that this entire tentative partial decision and the interim orders and the interim marketing agreements annexed hereto be published in the **Federal Register**.

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

The month of June 2007 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the order, as amended and as hereby proposed to be amended, regulating the handling of milk in the Appalachian, Florida and Southeast marketing areas is approved or favored by producers, as defined under the terms of the order as hereby proposed to be amended, who during such representative period were engaged in the production of milk for sale within the aforesaid marketing area.

#### **List of Subjects in 7 CFR Parts 1005, 1006 and 1007**

Milk marketing order.

Dated: February 25, 2008.

**Lloyd C. Day,**

*Administrator, Agricultural Marketing Service.*

#### **Interim Order Amending the Order Regulating the Handling of Milk in the Appalachian, Florida and Southeast Marketing Areas**

This interim order shall not become effective until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

**Findings and Determinations**

The findings and determinations hereinafter set forth supplement those that were made when the orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) *Findings.* A public hearing was held upon certain proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the Appalachian, Florida and Southeast marketing areas. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure (7 CFR part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said orders as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) 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 aforesaid marketing areas. The minimum prices specified in the orders as hereby 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

(3) The said orders as hereby amended regulate the handling of milk in the same manner as, and are applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

**Order Relative to Handling**

*It is therefore ordered*, that on and after the effective date hereof, the handling of milk in the Appalachian, Florida and Southeast marketing areas shall be in conformity to and in compliance with the terms and conditions of the orders, as amended, and as hereby amended, as follows:

**List of Subjects in 7 CFR Parts 1000, 1005, 1006, and 1007**

Milk marketing orders.

For the reasons set forth in the preamble, the Agricultural Marketing Service proposes to amend Chapter X of Title 7 of the Code of Federal Regulations as follows:

1. The authority citation for 7 CFR parts 1000, 1005, 1006 and 1007 continues to read as follows:

**Authority:** 7 U.S.C. 601–674, and 7253.

**PART 1000—[AMENDED]**

2. Amend § 1000.50 by revising paragraphs (b) and (c) to read as follows:

**§ 1000.50 Class prices, component prices, and advanced pricing factors.**

\* \* \* \* \*

(b) Class I skim milk price. The Class I skim milk price per hundredweight shall be the adjusted Class I differential specified in § 1000.52, plus the adjustment to Class I prices specified in § 1005.51(b), § 1006.51(b) and § 1007.51(b), plus the higher of the advanced pricing factors computed in paragraph (q)(1) or (2) of this section.

(c) Class I butterfat price. The Class I butterfat price per pound shall be the adjusted Class I differential specified in § 1000.52 divided by 100, plus the adjustments to Class I prices specified in § 1005.51(b), 1006.51(b) and 1007.51(b) divided by 100, plus the advanced butterfat price computed in paragraph (q)(3) of this section.

\* \* \* \* \*

**PART 1005—[AMENDED]**

3. Revise § 1005.51 to read as follows:

**§ 1005.51 Class I differential, adjustments to Class I prices, and Class I price.**

(a) The Class I differential shall be the differential established for Mecklenburg County, North Carolina, which is reported in § 1000.52. The Class I price shall be the price computed pursuant to § 1005.50(a) for Mecklenburg County, North Carolina.

(b) Adjustment to Class I prices. Class I prices shall be established pursuant to § 1000.50(a), (b) and (c) using the following adjustments:

State	County/Parish	FIPS	Class I price adjustment
GA .....	CATOOSA .....	13047	0.60
GA .....	CHATTOOGA .....	13055	0.60
GA .....	DADE .....	13083	0.60
GA .....	FANNIN .....	13111	0.60
GA .....	MURRAY .....	13213	0.60
GA .....	WALKER .....	13295	0.60
GA .....	WHITFIELD .....	13313	0.60
IN .....	CLARK .....	18019	0.10
IN .....	CRAWFORD .....	18025	0.10
IN .....	DAVISS .....	18027	0.10
IN .....	DUBOIS .....	18037	0.10
IN .....	FLOYD .....	18043	0.10
IN .....	GIBSON .....	18051	0.10
IN .....	GREENE .....	18055	0.10
IN .....	HARRISON .....	18061	0.10
IN .....	KNOX .....	18083	0.10
IN .....	MARTIN .....	18101	0.10
IN .....	ORANGE .....	18117	0.10
IN .....	PERRY .....	18123	0.10
IN .....	PIKE .....	18125	0.10
IN .....	POSEY .....	18129	0.10
IN .....	SCOTT .....	18143	0.10
IN .....	SPENCER .....	18147	0.10
IN .....	SULLIVAN .....	18153	0.10
IN .....	VANDERBURGH .....	18163	0.10
IN .....	WARRICK .....	18173	0.10
IN .....	WASHINGTON .....	18175	0.10
KY .....	ADAIR .....	21001	0.20

State	County/Parish	FIPS	Class I price adjustment
KY	ANDERSON	21005	0.40
KY	BATH	21011	0.40
KY	BELL	21013	0.50
KY	BOURBON	21017	0.40
KY	BOYLE	21021	0.40
KY	BREATHITT	21025	0.70
KY	BRECKINRIDGE	21027	0.10
KY	BULLITT	21029	0.10
KY	BUTLER	21031	0.20
KY	CARROLL	21041	0.10
KY	CARTER	21043	0.40
KY	CASEY	21045	0.20
KY	CLARK	21049	0.40
KY	CLAY	21051	0.50
KY	CLINTON	21053	0.50
KY	CUMBERLAND	21057	0.50
KY	DAVISS	21059	0.10
KY	EDMONSON	21061	0.20
KY	ELLIOTT	21063	0.40
KY	ESTILL	21065	0.40
KY	FAYETTE	21067	0.40
KY	FLEMING	21069	0.40
KY	FRANKLIN	21073	0.10
KY	GALLATIN	21077	0.10
KY	GARRARD	21079	0.40
KY	GRAYSON	21085	0.20
KY	GREEN	21087	0.20
KY	HANCOCK	21091	0.10
KY	HARDIN	21093	0.10
KY	HARLAN	21095	0.50
KY	HART	21099	0.20
KY	HENDERSON	21101	0.10
KY	HENRY	21103	0.10
KY	HOPKINS	21107	0.20
KY	JACKSON	21109	0.70
KY	JEFFERSON	21111	0.10
KY	JESSAMINE	21113	0.40
KY	KNOTT	21119	0.50
KY	KNOX	21121	0.50
KY	LARUE	21123	0.40
KY	LAUREL	21125	0.50
KY	LEE	21129	0.40
KY	LESLIE	21131	0.50
KY	LETCHER	21133	0.50
KY	LINCOLN	21137	0.40
KY	MC CREARY	21147	0.50
KY	MC LEAN	21149	0.40
KY	MADISON	21151	0.40
KY	MARION	21155	0.40
KY	MEADE	21163	0.10
KY	MENIFEE	21165	0.40
KY	MERCER	21167	0.40
KY	MONTGOMERY	21173	0.40
KY	MORGAN	21175	0.40
KY	MUHLENBURG	21177	0.20
KY	NELSON	21179	0.10
KY	NICHOLAS	21181	0.40
KY	OHIO	21183	0.20
KY	OLDHAM	21185	0.10
KY	OWEN	21187	0.10
KY	OWSLEY	21189	0.70
KY	PERRY	21193	0.50
KY	POWELL	21197	0.40
KY	PULASKI	21199	0.50
KY	ROCKCASTLE	21203	0.70
KY	ROWAN	21205	0.40
KY	RUSSELL	21207	0.50
KY	SCOTT	21209	0.10
KY	SHELBY	21211	0.10
KY	SPENCER	21215	0.10
KY	TAYLOR	21217	0.20
KY	TRIMBLE	21223	0.10
KY	UNION	21225	0.10

State	County/Parish	FIPS	Class I price adjustment
KY	WASHINGTON	21229	0.40
KY	WAYNE	21231	0.50
KY	WEBSTER	21233	0.20
KY	WHITLEY	21235	0.50
KY	WOLFE	21237	0.40
KY	WOODFORD	21239	0.40
NC	ALAMANCE	37001	0.30
NC	ALEXANDER	37003	0.45
NC	ALLEGHANY	37005	0.45
NC	ANSON	37007	0.50
NC	ASHE	37009	0.45
NC	AVERY	37011	0.45
NC	BEAUFORT	37013	0.40
NC	BERTIE	37015	0.20
NC	BLADEN	37017	0.70
NC	BRUNSWICK	37019	0.70
NC	BUNCOMBE	37021	0.45
NC	BURKE	37023	0.45
NC	CABARRUS	37025	0.30
NC	CALDWELL	37027	0.45
NC	CAMDEN	37029	0.20
NC	CARTERET	37031	0.40
NC	CASWELL	37033	0.30
NC	CATAWBA	37035	0.30
NC	CHATHAM	37037	0.30
NC	CHEROKEE	37039	0.45
NC	CHOWAN	37041	0.20
NC	CLAY	37043	0.45
NC	CLEVELAND	37045	0.30
NC	COLUMBUS	37047	0.70
NC	CRAVEN	37049	0.40
NC	CUMBERLAND	37051	0.30
NC	CURRITUCK	37053	0.20
NC	DARE	37055	0.40
NC	DAVIDSON	37057	0.30
NC	DAVIE	37059	0.30
NC	DUPLIN	37061	0.30
NC	DURHAM	37063	0.30
NC	EDGECOMBE	37065	0.20
NC	FORSYTH	37067	0.30
NC	FRANKLIN	37069	0.30
NC	GASTON	37071	0.30
NC	GATES	37073	0.20
NC	GRAHAM	37075	0.45
NC	GRANVILLE	37077	0.30
NC	GREENE	37079	0.40
NC	GUILFORD	37081	0.30
NC	HALIFAX	37083	0.30
NC	HARNETT	37085	0.10
NC	HAYWOOD	37087	0.45
NC	HENDERSON	37089	0.45
NC	HERTFORD	37091	0.20
NC	HOKE	37093	0.30
NC	HYDE	37095	0.40
NC	IREDELL	37097	0.30
NC	JACKSON	37099	0.45
NC	JOHNSTON	37101	0.20
NC	JONES	37103	0.40
NC	LEE	37105	0.30
NC	LENOIR	37107	0.40
NC	LINCOLN	37109	0.30
NC	MC DOWELL	37111	0.45
NC	MACON	37113	0.45
NC	MADISON	37115	0.45
NC	MARTIN	37117	0.40
NC	MECKLENBURG	37119	0.30
NC	MITCHELL	37121	0.45
NC	MONTGOMERY	37123	0.30
NC	MOORE	37125	0.30
NC	NASH	37127	0.30
NC	NEW HANOVER	37129	0.70
NC	NORTHAMPTON	37131	0.30
NC	ONslow	37133	0.30



State	County/Parish	FIPS	Class I price adjustment
NC	ORANGE	37135	0.30
NC	PAMLICO	37137	0.40
NC	PASQUOTANK	37139	0.20
NC	PENDER	37141	0.70
NC	PERQUIMANS	37143	0.20
NC	PERSON	37145	0.30
NC	PITT	37147	0.40
NC	POLK	37149	0.30
NC	RANDOLPH	37151	0.30
NC	RICHMOND	37153	0.50
NC	ROBESON	37155	0.70
NC	ROCKINGHAM	37157	0.45
NC	ROWAN	37159	0.30
NC	RUTHERFORD	37161	0.30
NC	SAMPSON	37163	0.30
NC	SCOTLAND	37165	0.30
NC	STANLY	37167	0.30
NC	STOKES	37169	0.45
NC	SURRY	37171	0.45
NC	SWAIN	37173	0.45
NC	TRANSYLVANIA	37175	0.45
NC	TYRRELL	37177	0.40
NC	UNION	37179	0.50
NC	VANCE	37181	0.30
NC	WAKE	37183	0.30
NC	WARREN	37185	0.30
NC	WASHINGTON	37187	0.40
NC	WATAUGA	37189	0.45
NC	WAYNE	37191	0.40
NC	WILKES	37193	0.45
NC	WILSON	37195	0.20
NC	YADKIN	37197	0.30
NC	YANCEY	37199	0.45
SC	ABBEVILLE	45001	0.50
SC	AIKEN	45003	0.70
SC	ALLENDALE	45005	1.00
SC	ANDERSON	45007	0.50
SC	BAMBERG	45009	0.70
SC	BARNWELL	45011	0.70
SC	BEAUFORT	45013	1.00
SC	BERKELEY	45015	1.00
SC	CALHOUN	45017	0.70
SC	CHARLESTON	45019	1.00
SC	CHEROKEE	45021	0.50
SC	CHESTER	45023	0.50
SC	CHESTERFIELD	45025	0.30
SC	CLARENDON	45027	0.70
SC	COLLETON	45029	1.00
SC	DARLINGTON	45031	0.70
SC	DILLON	45033	0.70
SC	DORCHESTER	45035	1.00
SC	EDGEFIELD	45037	0.30
SC	FAIRFIELD	45039	0.30
SC	FLORENCE	45041	0.70
SC	GEORGETOWN	45043	0.70
SC	GREENVILLE	45045	0.50
SC	GREENWOOD	45047	0.50
SC	HAMPTON	45049	1.00
SC	HORRY	45051	0.70
SC	JASPER	45053	1.00
SC	KERSHAW	45055	0.30
SC	LANCASTER	45057	0.50
SC	LAURENS	45059	0.50
SC	LEE	45061	0.70
SC	LEXINGTON	45063	0.70
SC	MC CORMICK	45065	0.50
SC	MARION	45067	0.70
SC	MARLBORO	45069	0.70
SC	NEWBERRY	45071	0.30
SC	OCONEE	45073	0.50
SC	ORANGEBURG	45075	0.70
SC	PICKENS	45077	0.50
SC	RICHLAND	45079	0.70

State	County/Parish	FIPS	Class I price adjustment
SC	SALUDA	45081	0.30
SC	SPARTANBURG	45083	0.50
SC	SUMTER	45085	0.70
SC	UNION	45087	0.50
SC	WILLIAMSBURG	45089	0.70
SC	YORK	45091	0.50
TN	ANDERSON	47001	0.40
TN	BLOUNT	47009	0.40
TN	BRADLEY	47011	0.60
TN	CAMPBELL	47013	0.40
TN	CARTER	47019	0.40
TN	CLAIBORNE	47025	0.40
TN	COCKE	47029	0.40
TN	CUMBERLAND	47035	0.40
TN	GRAINGER	47057	0.40
TN	GREENE	47059	0.40
TN	HAMBLEN	47063	0.40
TN	HAMILTON	47065	0.60
TN	HANCOCK	47067	0.40
TN	HAWKINS	47073	0.40
TN	JEFFERSON	47089	0.40
TN	JOHNSON	47091	0.40
TN	KNOX	47093	0.40
TN	LOUDON	47105	0.40
TN	MC MINN	47107	0.60
TN	MARION	47115	0.60
TN	MEIGS	47121	0.60
TN	MONROE	47123	0.60
TN	MORGAN	47129	0.40
TN	POLK	47139	0.60
TN	RHEA	47143	0.40
TN	ROANE	47145	0.40
TN	SCOTT	47151	0.10
TN	SEQUATCHIE	47153	0.40
TN	SEVIER	47155	0.40
TN	SULLIVAN	47163	0.40
TN	UNICOI	47171	0.40
TN	UNION	47173	0.40
TN	WASHINGTON	47179	0.40
VA	ALLEGHANY	51005	0.10
VA	AMHERST	51009	0.40
VA	AUGUSTA	51015	0.10
VA	BATH	51017	0.10
VA	BEDFORD	51019	0.40
VA	BLAND	51021	0.40
VA	BOTETOURT	51023	0.10
VA	BUCHANAN	51027	0.10
VA	CAMPBELL	51031	0.40
VA	CARROLL	51035	0.40
VA	CRAIG	51045	0.10
VA	DICKENSON	51051	0.40
VA	FLOYD	51063	0.40
VA	FRANKLIN	51067	0.40
VA	GILES	51071	0.10
VA	GRAYSON	51077	0.40
VA	HENRY	51089	0.40
VA	HIGHLAND	51091	0.10
VA	LEE	51105	0.40
VA	MONTGOMERY	51121	0.40
VA	PATRICK	51141	0.40
VA	PITTSYLVANIA	51143	0.40
VA	PULASKI	51155	0.40
VA	ROANOKE	51161	0.40
VA	ROCKBRIDGE	51163	0.10
VA	ROCKINGHAM	51165	0.10
VA	RUSSELL	51167	0.40
VA	SCOTT	51169	0.40
VA	SMYTH	51173	0.40
VA	TAZEWELL	51185	0.40
VA	WASHINGTON	51191	0.40
VA	WISE	51195	0.40
VA	WYTHE	51197	0.40
VA	BEDFORD CITY	51515	0.40

State	County/Parish	FIPS	Class I price adjustment
VA .....	BRISTOL CITY .....	51520	0.40
VA .....	BUENA VISTA CITY .....	51530	0.10
VA .....	CLIFTON FORGE CITY .....	51560	0.10
VA .....	COVINGTON CITY .....	51580	0.10
VA .....	DANVILLE CITY .....	51590	0.40
VA .....	GALAX CITY .....	51640	0.40
VA .....	HARRISONBURG CITY .....	51660	0.10
VA .....	LEXINGTON CITY .....	51678	0.10
VA .....	LYNCHBURG CITY .....	51680	0.40
VA .....	MARTINSVILLE CITY .....	51690	0.40
VA .....	NORTON CITY .....	51720	0.40
VA .....	RADFORD CITY .....	51750	0.40
VA .....	ROANOKE CITY .....	51770	0.40
VA .....	SALEM CITY .....	51775	0.40
VA .....	STAUNTON CITY .....	51790	0.10
VA .....	WAYNESBORO CITY .....	51820	0.10
WV .....	MC DOWELL .....	54047	0.10
WV .....	MERCER .....	54055	0.10

4. Amend § 1005.13 by revising paragraph (d)(1) through (4) to read as follows:

**§ 1005.13 Producer Milk.**

\* \* \* \* \*

(d) \* \* \*

(1) In any month of July through December, not less than 1 day's production of the producer whose milk is diverted is physically received at a pool plant during the month;

(2) In any month of January through June, not less than 1 day's production of the producer whose milk is diverted is physically received at a pool plant during the month;

(3) The total quantity of milk so diverted during the month by a cooperative association shall not exceed 25 percent during the months of July through November, January, and February, and 35 percent during the months of December and March through June, of the producer milk that the cooperative association caused to be delivered to, and physically received at, pool plants during the month;

(4) The operator of a pool plant that is not a cooperative association may divert any milk that is not under the control of a cooperative association that diverts milk during the month pursuant to paragraph (d) of this section. The total quantity of milk so diverted during the month shall not exceed 25 percent during the months of July through November, January, and February, and 35 percent during the months of December and March through June, of the producer milk physically received at such plant (or such unit of plants in the case of plants that pool as a unit pursuant to § 1005.7(d)) during the month, excluding the quantity of

producer milk received from handler described in § 1000.9(c);

\* \* \* \* \*

5. Amend § 1005.81 by revising (a) to read as follows:

**§ 1005.81 Payments to the transportation credit balancing fund.**

(a) On or before the 12th day after the end of the month (except) as provided in § 1009.90), each handler operating a pool plant and each handler specified in § 1000.9(c) shall pay to the Market Administrator a transportation credit balancing fund assessment determined by multiplying the pounds of Class I producer milk assigned pursuant to § 1005.44 by \$0.15 per hundredweight or such lesser amount as the Market Administrator deems necessary to maintain a balance in the fund equal to the total transportation credits disbursed during the prior June–February period. In the event that during any month of the June–February period the fund balance is insufficient to cover the amount of credits that are due, the assessment should be based upon the amount of credits that would have been disbursed had the fund balance been sufficient.

\* \* \* \* \*

6. Amend § 1005.82 by revising paragraphs (a)(1), (b), (c)(1), removing paragraph (c)(2)(i), revising paragraphs (d)(2) (iii), (d)(3)(v), and redesignating paragraphs (c)(2)(ii), (c)(2)(iii), (c)(2)(iv) as (c)(2)(i), (c)(2)(ii) and (c)(2)(iii), and revising newly redesignated paragraphs (c)(2)(i) and (c)(2)(iii) to read as follows:

**§ 1005.82 Payments from the transportation credit balancing fund.**

(a) \* \* \*

(1) On or before the 13th day (except as provided in § 1000.90) after the end of each of the months of January,

February and July through December and any other month in which transportation credits are in effect pursuant to paragraph (b) of this section, the market administrator shall pay to each handler that received, and reported pursuant to § 1005.30(a)(5), bulk milk transferred from a plant fully regulated under another Federal order as described in paragraph (c)(1) of this section or that received, and reported pursuant to § 1005.30(a)(6), milk directly from producers' farms as specified in paragraph (c)(2) of this section, a preliminary amount determined pursuant to paragraph (d) of this section to the extent that funds are available in the transportation credit balancing fund. If an insufficient balance exists to pay all of the credits computed pursuant to this section, the market administrator shall distribute the balance available in the transportation credit balancing fund by reducing payments prorata using the percentage derived by dividing the balance in the fund by the total credits that are due for the month. The amount of credits resulting from this initial proration shall be subject to audit adjustment pursuant to paragraph (a)(2) of this section.

\* \* \* \* \*

(b) The Market Administrator may extend the period during which transportation credits are in effect (i.e., the transportation credit period) to the month of June if a written request to do so is received 15 days prior to the beginning of the month for which the request is made and, after conducting an independent investigation, finds that such extension is necessary to assure the market of an adequate supply of milk for fluid use. Before making such a finding, the Market Administrator shall notify the Deputy Administrator of the Dairy Programs and all handlers in

the market that an extension is being considered and invite written data, views, and arguments. Any decision to extend the transportation credit period must be issued in writing prior to the first day of the month for which the extension is to be effective.

(c) \* \* \*

(1) Bulk milk received at a pool distributing plant from a plant regulated under another Federal order, except Federal Order 1007; and

\* \* \* \* \*

(2) \* \* \*

(i) The dairy farmer was not a “producer” under this order for more than 45 days during the immediately preceding months of March through May, or not more than 50 percent of the production of the dairy farmer during those 3 months, in aggregate, was received as producer milk under this order during those 3 months; and

\* \* \* \* \*

(iii) The market administrator may increase or decrease the milk

production standard specified in paragraph (c)(2)(i) of this section if the market administrator finds that such revision is necessary to assure orderly marketing and efficient handling of milk in the marketing area. Before making such a finding, the market administrator shall investigate the need for the revision either on the market administrator's own initiative or at the request of interested persons. If the investigation shows that a revision might be appropriate, the market administrator shall issue a notice stating that the revision is being considered and inviting written data, views, and arguments. Any decision to revise an applicable percentage must be issued in writing at least one day before the effective date.

(d) \* \* \*

(2) \* \* \*

(iii) Subtract the applicable Class I price specified in § 1000.50(a) for the county in which the shipping plant is located from the Class I price applicable

for the county in which the receiving plant is located;

\* \* \* \* \*

(3) \* \* \*

(v) Subtract the Class I price specified in § 1000.50(a) applicable for the county in which the origination point is located from the Class I price applicable at the receiving pool plant's location;

\* \* \* \* \*

#### PART 1006—[AMENDED]

7. Revise § 1006.51 to read as follows:

##### § 1006.51 Class I differential, adjustments to Class I prices, and Class I price.

(a) The Class I differential shall be the differential established for Hillsborough County, Florida, which is reported in § 000.52. The Class I price shall be the price computed pursuant to § 006.50 (a) for Hillsborough County, Florida.

(b) Adjustment to Class I prices. Class I prices shall be established pursuant to § 000.50 (a), (b) and (c) using the following adjustments:

State	County/Parish	FIPS	Class I price adjustment
FL .....	ALACHUA .....	12001	1.30
FL .....	BAKER .....	12003	1.30
FL .....	BAY .....	12005	0.60
FL .....	BRADFORD .....	12007	1.30
FL .....	BREVARD .....	12009	1.40
FL .....	BROWARD .....	12011	1.70
FL .....	CALHOUN .....	12013	0.60
FL .....	CHARLOTTE .....	12015	1.50
FL .....	CITRUS .....	12017	1.40
FL .....	CLAY .....	12019	1.30
FL .....	COLLIER .....	12021	1.70
FL .....	COLUMBIA .....	12023	1.30
FL .....	DADE .....	12025	1.70
FL .....	DE SOTO .....	12027	1.80
FL .....	DIXIE .....	12029	1.30
FL .....	DUVAL .....	12031	1.30
FL .....	FLAGLER .....	12035	1.00
FL .....	FRANKLIN .....	12037	0.90
FL .....	GADSDEN .....	12039	0.90
FL .....	GILCHRIST .....	12041	1.30
FL .....	GLADES .....	12043	1.50
FL .....	GULF .....	12045	0.90
FL .....	HAMILTON .....	12047	1.30
FL .....	HARDEE .....	12049	1.80
FL .....	HENDRY .....	12051	1.70
FL .....	HERNANDO .....	12053	1.40
FL .....	HIGHLANDS .....	12055	1.80
FL .....	HILLSBOROUGH .....	12057	1.40
FL .....	HOLMES .....	12059	0.60
FL .....	INDIAN RIVER .....	12061	1.80
FL .....	JACKSON .....	12063	0.60
FL .....	JEFFERSON .....	12065	0.90
FL .....	LAFAYETTE .....	12067	1.30
FL .....	LAKE .....	12069	1.40
FL .....	LEE .....	12071	1.70
FL .....	LEON .....	12073	0.90
FL .....	LEVY .....	12075	1.00
FL .....	LIBERTY .....	12077	0.90
FL .....	MADISON .....	12079	1.30
FL .....	MANATEE .....	12081	1.80
FL .....	MARION .....	12083	1.00
FL .....	MARTIN .....	12085	1.50
FL .....	MONROE .....	12087	1.70

State	County/Parish	FIPS	Class I price adjustment
FL .....	NASSAU .....	12089	1.30
FL .....	OKEECHOBEE .....	12093	1.80
FL .....	ORANGE .....	12095	1.40
FL .....	OSCEOLA .....	12097	1.40
FL .....	PALM BEACH .....	12099	1.70
FL .....	PASCO .....	12101	1.40
FL .....	PINELLAS .....	12103	1.40
FL .....	POLK .....	12105	1.40
FL .....	PUTNAM .....	12107	1.30
FL .....	SAINT JOHNS .....	12109	1.30
FL .....	SAINT LUCIE .....	12111	1.80
FL .....	SARASOTA .....	12115	1.80
FL .....	SEMINOLE .....	12117	1.40
FL .....	SUMTER .....	12119	1.40
FL .....	SUWANNEE .....	12121	1.30
FL .....	TAYLOR .....	12123	1.30
FL .....	UNION .....	12125	1.30
FL .....	VOLUSIA .....	12127	1.40
FL .....	WAKULLA .....	12129	0.90
FL .....	WASHINGTON .....	12133	0.60

**PART 1007—[AMENDED]**

8. Revise § 1007.51 to read as follows:

**§ 1007.51 Class I differential, adjustments to Class I prices, and Class I price.**

(a) The Class I differential shall be the differential established for Fulton County, Georgia, which is reported in § 1000.52. The Class I price shall be the

price computed pursuant to § 1007.50(a) for Fulton County, Georgia.

(b) Adjustment to Class I prices. Class I prices shall be established pursuant to § 1000.50(a), (b) and (c) using the following adjustments:

State	County/Parish	FIPS	Class I price adjustment
AL .....	AUTAUGA .....	01001	0.50
AL .....	BALDWIN .....	01003	0.50
AL .....	BARBOUR .....	01005	0.55
AL .....	BIBB .....	01007	0.30
AL .....	BLOUNT .....	01009	0.20
AL .....	BULLOCK .....	01011	0.70
AL .....	BUTLER .....	01013	0.55
AL .....	CALHOUN .....	01015	0.30
AL .....	CHAMBERS .....	01017	0.70
AL .....	CHEROKEE .....	01019	0.30
AL .....	CHILTON .....	01021	0.70
AL .....	CHOCTAW .....	01023	0.50
AL .....	CLARKE .....	01025	0.35
AL .....	CLAY .....	01027	0.70
AL .....	CLEBURNE .....	01029	0.70
AL .....	COFFEE .....	01031	0.85
AL .....	COLBERT .....	01033	0.30
AL .....	CONECUH .....	01035	0.55
AL .....	COOSA .....	01037	0.70
AL .....	COVINGTON .....	01039	0.55
AL .....	CRENSHAW .....	01041	0.55
AL .....	CULLMAN .....	01043	0.20
AL .....	DALE .....	01045	0.85
AL .....	DALLAS .....	01047	0.50
AL .....	DE KALB .....	01049	0.40
AL .....	ELMORE .....	01051	0.50
AL .....	ESCAMBIA .....	01053	0.55
AL .....	ETOWAH .....	01055	0.30
AL .....	FAYETTE .....	01057	0.20
AL .....	FRANKLIN .....	01059	0.30
AL .....	GENEVA .....	01061	0.85
AL .....	GREENE .....	01063	0.30
AL .....	HALE .....	01065	0.30
AL .....	HENRY .....	01067	0.85
AL .....	HOUSTON .....	01069	0.85
AL .....	JACKSON .....	01071	0.40
AL .....	JEFFERSON .....	01073	0.30
AL .....	LAMAR .....	01075	0.20
AL .....	LAUDERDALE .....	01077	0.30
AL .....	LAWRENCE .....	01079	0.30

State	County/Parish	FIPS	Class I price adjustment
AL	LEE	01081	0.70
AL	LIMESTONE	01083	0.30
AL	LOWNDES	01085	0.70
AL	MACON	01087	0.70
AL	MADISON	01089	0.30
AL	MARENGO	01091	0.50
AL	MARION	01093	0.20
AL	MARSHALL	01095	0.40
AL	MOBILE	01097	0.50
AL	MONROE	01099	0.35
AL	MONTGOMERY	01101	0.70
AL	MORGAN	01103	0.30
AL	PERRY	01105	0.30
AL	PICKENS	01107	0.30
AL	PIKE	01109	0.55
AL	RANDOLPH	01111	0.70
AL	RUSSELL	01113	0.70
AL	SAINT CLAIR	01115	0.30
AL	SHELBY	01117	0.30
AL	SUMTER	01119	0.30
AL	TALLADEGA	01121	0.30
AL	TALLAPOOSA	01123	0.70
AL	TUSCALOOSA	01125	0.30
AL	WALKER	01127	0.20
AL	WASHINGTON	01129	0.35
AL	WILCOX	01131	0.50
AL	WINSTON	01133	0.20
AR	ARKANSAS	05001	0.00
AR	ASHLEY	05003	0.10
AR	BAXTER	05005	0.10
AR	BENTON	05007	0.10
AR	BOONE	05009	0.10
AR	BRADLEY	05011	0.30
AR	CALHOUN	05013	0.30
AR	CARROLL	05015	0.10
AR	CHICOT	05017	0.10
AR	CLARK	05019	0.00
AR	CLAY	05021	0.10
AR	CLEBURNE	05023	0.10
AR	CLEVELAND	05025	0.30
AR	COLUMBIA	05027	0.10
AR	CONWAY	05029	0.10
AR	CRAIGHEAD	05031	0.10
AR	CRAWFORD	05033	0.10
AR	CRITTENDEN	05035	0.10
AR	CROSS	05037	0.10
AR	DALLAS	05039	0.00
AR	DESHA	05041	0.30
AR	DREW	05043	0.30
AR	FAULKNER	05045	0.10
AR	FRANKLIN	05047	0.10
AR	FULTON	05049	0.10
AR	GARLAND	05051	0.10
AR	GRANT	05053	0.00
AR	GREENE	05055	0.10
AR	HEMPSTEAD	05057	0.30
AR	HOT SPRING	05059	0.00
AR	HOWARD	05061	0.00
AR	INDEPENDENCE	05063	0.10
AR	IZARD	05065	0.10
AR	JACKSON	05067	0.10
AR	JEFFERSON	05069	0.00
AR	JOHNSON	05071	0.10
AR	LAFAYETTE	05073	0.10
AR	LAWRENCE	05075	0.10
AR	LEE	05077	0.10
AR	LINCOLN	05079	0.30
AR	LITTLE RIVER	05081	0.30
AR	LOGAN	05083	0.10
AR	LONOKE	05085	0.10
AR	MADISON	05087	0.10
AR	MARION	05089	0.10
AR	MILLER	05091	0.10

State	County/Parish	FIPS	Class I price adjustment
AR	MISSISSIPPI	05093	0.30
AR	MONROE	05095	0.10
AR	MONTGOMERY	05097	0.10
AR	NEVADA	05099	0.30
AR	NEWTON	05101	0.10
AR	OUACHITA	05103	0.30
AR	PERRY	05105	0.10
AR	PHILLIPS	05107	0.00
AR	PIKE	05109	0.00
AR	POINSETT	05111	0.30
AR	POLK	05113	0.10
AR	POPE	05115	0.10
AR	PRAIRIE	05117	0.10
AR	PULASKI	05119	0.10
AR	RANDOLPH	05121	0.10
AR	SAINT FRANCIS	05123	0.10
AR	SALINE	05125	0.10
AR	SCOTT	05127	0.10
AR	SEARCY	05129	0.10
AR	SEBASTIAN	05131	0.10
AR	SEVIER	05133	0.00
AR	SHARP	05135	0.10
AR	STONE	05137	0.10
AR	UNION	05139	0.10
AR	VAN BUREN	05141	0.10
AR	WASHINGTON	05143	0.10
AR	WHITE	05145	0.10
AR	WOODRUFF	05147	0.10
AR	YELL	05149	0.10
FL	ESCAMBIA	12033	0.55
FL	OKALOOSA	12091	0.55
FL	SANTA ROSA	12113	0.55
FL	WALTON	12131	0.55
GA	APPLING	13001	1.15
GA	ATKINSON	13003	1.15
GA	BACON	13005	1.15
GA	BAKER	13007	0.85
GA	BALDWIN	13009	0.70
GA	BANKS	13011	0.70
GA	BARROW	13013	0.70
GA	BARTOW	13015	0.30
GA	BEN HILL	13017	1.15
GA	BERRIEN	13019	1.15
GA	BIBB	13021	0.70
GA	BLECKLEY	13023	1.00
GA	BRANTLEY	13025	1.15
GA	BROOKS	13027	1.15
GA	BRYAN	13029	1.15
GA	BULLOCH	13031	1.00
GA	BURKE	13033	0.70
GA	BUTTS	13035	0.70
GA	CALHOUN	13037	0.85
GA	CAMDEN	13039	1.15
GA	CANDLER	13043	1.00
GA	CARROLL	13045	0.70
GA	CHARLTON	13049	1.15
GA	CHATHAM	13051	1.15
GA	CHATTAHOOCHEE	13053	0.70
GA	CHEROKEE	13057	0.30
GA	CLARKE	13059	0.70
GA	CLAY	13061	0.85
GA	CLAYTON	13063	0.70
GA	CLINCH	13065	1.15
GA	COBB	13067	0.70
GA	COFFEE	13069	1.15
GA	COLQUITT	13071	1.15
GA	COLUMBIA	13073	0.70
GA	COOK	13075	1.15
GA	COWETA	13077	0.70
GA	CRAWFORD	13079	0.70
GA	CRISP	13081	0.85
GA	DAWSON	13085	0.30
GA	DECATUR	13087	1.15



State	County/Parish	FIPS	Class I price adjustment
GA	DE KALB	13089	0.70
GA	DODGE	13091	0.85
GA	DOOLY	13093	0.85
GA	DOUGHERTY	13095	0.85
GA	DOUGLAS	13097	0.70
GA	EARLY	13099	0.85
GA	ECHOLS	13101	1.15
GA	EFFINGHAM	13103	1.00
GA	ELBERT	13105	0.70
GA	EMANUEL	13107	1.00
GA	EVANS	13109	1.15
GA	FAYETTE	13113	0.70
GA	FLOYD	13115	0.30
GA	FORSYTH	13117	0.70
GA	FRANKLIN	13119	0.70
GA	FULTON	13121	0.70
GA	GILMER	13123	0.30
GA	GLASCOCK	13125	0.90
GA	GLYNN	13127	1.15
GA	GORDON	13129	0.30
GA	GRADY	13131	1.15
GA	GREENE	13133	0.70
GA	GWINNETT	13135	0.70
GA	HABERSHAM	13137	0.30
GA	HALL	13139	0.70
GA	HANCOCK	13141	0.70
GA	HARALSON	13143	0.70
GA	HARRIS	13145	0.70
GA	HART	13147	0.70
GA	HEARD	13149	0.70
GA	HENRY	13151	0.70
GA	HOUSTON	13153	0.70
GA	IRWIN	13155	1.15
GA	JACKSON	13157	0.70
GA	JASPER	13159	0.70
GA	JEFF DAVIS	13161	1.15
GA	JEFFERSON	13163	0.70
GA	JENKINS	13165	1.00
GA	JOHNSON	13167	1.00
GA	JONES	13169	0.70
GA	LAMAR	13171	0.70
GA	LANIER	13173	1.15
GA	LAURENS	13175	1.00
GA	LEE	13177	0.85
GA	LIBERTY	13179	1.15
GA	LINCOLN	13181	0.70
GA	LONG	13183	1.15
GA	LOWNDES	13185	1.15
GA	LUMPKIN	13187	0.30
GA	MC DUFFIE	13189	0.70
GA	MC INTOSH	13191	1.15
GA	MACON	13193	0.70
GA	MADISON	13195	0.70
GA	MARION	13197	0.70
GA	MERIWETHER	13199	0.70
GA	MILLER	13201	0.85
GA	MITCHELL	13205	1.15
GA	MONROE	13207	0.70
GA	MONTGOMERY	13209	1.15
GA	MORGAN	13211	0.70
GA	MUSCOGEE	13215	0.70
GA	NEWTON	13217	0.70
GA	OCONEE	13219	0.70
GA	OGLETHORPE	13221	0.70
GA	PAULDING	13223	0.70
GA	PEACH	13225	0.70
GA	PICKENS	13227	0.30
GA	PIERCE	13229	1.15
GA	PIKE	13231	0.70
GA	POLK	13233	0.70
GA	PULASKI	13235	0.85
GA	PUTNAM	13237	0.70
GA	QUITMAN	13239	0.85

State	County/Parish	FIPS	Class I price adjustment
GA	RABUN	13241	0.30
GA	RANDOLPH	13243	0.85
GA	RICHMOND	13245	0.70
GA	ROCKDALE	13247	0.70
GA	SCHLEY	13249	0.70
GA	SCREVEN	13251	1.00
GA	SEMINOLE	13253	1.15
GA	SPALDING	13255	0.70
GA	STEPHENS	13257	0.30
GA	STEWART	13259	0.55
GA	SUMTER	13261	0.85
GA	TALBOT	13263	0.70
GA	TALIAFERRO	13265	0.70
GA	TATTNALL	13267	1.15
GA	TAYLOR	13269	0.70
GA	TELFAIR	13271	1.15
GA	TERRELL	13273	0.85
GA	THOMAS	13275	1.15
GA	TIFT	13277	1.15
GA	TOOMBS	13279	1.15
GA	TOWNS	13281	0.30
GA	TREUTLEN	13283	1.00
GA	TROUP	13285	0.70
GA	TURNER	13287	0.85
GA	TWIGGS	13289	0.70
GA	UNION	13291	0.30
GA	UPSON	13293	0.70
GA	WALTON	13297	0.70
GA	WARE	13299	1.15
GA	WARREN	13301	0.70
GA	WASHINGTON	13303	0.70
GA	WAYNE	13305	1.15
GA	WEBSTER	13307	0.55
GA	WHEELER	13309	1.15
GA	WHITE	13311	0.30
GA	WILCOX	13315	0.85
GA	WILKES	13317	0.70
GA	WILKINSON	13319	0.70
GA	WORTH	13321	0.85
KY	ALLEN	21003	0.20
KY	BALLARD	21007	0.30
KY	BARREN	21009	0.20
KY	CALDWELL	21033	0.20
KY	CALLOWAY	21035	0.30
KY	CARLISLE	21039	0.30
KY	CHRISTIAN	21047	0.20
KY	CRITTENDEN	21055	0.20
KY	FULTON	21075	0.30
KY	GRAVES	21083	0.30
KY	HICKMAN	21105	0.30
KY	LIVINGSTON	21139	0.30
KY	LOGAN	21141	0.20
KY	LYON	21143	0.20
KY	MC CRACKEN	21145	0.30
KY	MARSHALL	21157	0.30
KY	METCALFE	21169	0.20
KY	MONROE	21171	0.50
KY	SIMPSON	21213	0.20
KY	TODD	21219	0.20
KY	TRIGG	21221	0.20
KY	WARREN	21227	0.20
LA	ACADIA	22001	0.30
LA	ALLEN	22003	0.30
LA	ASCENSION	22005	0.20
LA	ASSUMPTION	22007	0.20
LA	AVOUELLES	22009	0.00
LA	BEAUREGARD	22011	0.30
LA	BIENVILLE	22013	0.00
LA	BOSSIER	22015	0.10
LA	CADDO	22017	0.10
LA	CALCASIEU	22019	0.30
LA	CALDWELL	22021	0.00
LA	CAMERON	22023	0.20

State	County/Parish	FIPS	Class I price adjustment
LA .....	CATAHOULA .....	22025	0.00
LA .....	CLAIBORNE .....	22027	0.10
LA .....	CONCORDIA .....	22029	0.00
LA .....	DE SOTO .....	22031	0.00
LA .....	EAST BATON ROUGE .....	22033	0.20
LA .....	EAST CARROLL .....	22035	0.20
LA .....	EAST FELICIANA .....	22037	0.30
LA .....	EVANGELINE .....	22039	0.30
LA .....	FRANKLIN .....	22041	0.00
LA .....	GRANT .....	22043	0.00
LA .....	IBERIA .....	22045	0.20
LA .....	IBERVILLE .....	22047	0.20
LA .....	JACKSON .....	22049	0.00
LA .....	JEFFERSON .....	22051	0.20
LA .....	JEFFERSON DAVIS .....	22053	0.30
LA .....	LAFAYETTE .....	22055	0.20
LA .....	LAFOURCHE .....	22057	0.20
LA .....	LA SALLE .....	22059	0.00
LA .....	LINCOLN .....	22061	0.10
LA .....	LIVINGSTON .....	22063	0.20
LA .....	MADISON .....	22065	0.00
LA .....	MOREHOUSE .....	22067	0.10
LA .....	NATCHITOCHES .....	22069	0.00
LA .....	ORLEANS .....	22071	0.20
LA .....	OUACHITA .....	22073	0.10
LA .....	PLAQUEMINES .....	22075	0.20
LA .....	POINTE COUPEE .....	22077	0.30
LA .....	RAPIDES .....	22079	0.00
LA .....	RED RIVER .....	22081	0.00
LA .....	RICHLAND .....	22083	0.20
LA .....	SABINE .....	22085	0.00
LA .....	SAINT BERNARD .....	22087	0.20
LA .....	SAINT CHARLES .....	22089	0.20
LA .....	SAINT HELENA .....	22091	0.30
LA .....	SAINT JAMES .....	22093	0.20
LA .....	SAINT JOHN THE BAPTIST .....	22095	0.20
LA .....	SAINT LANDRY .....	22097	0.30
LA .....	SAINT MARTIN .....	22099	0.20
LA .....	SAINT MARY .....	22101	0.20
LA .....	SAINT TAMMANY .....	22103	0.30
LA .....	TANGIPAHOA .....	22105	0.20
LA .....	TENSAS .....	22107	0.00
LA .....	TERREBONNE .....	22109	0.20
LA .....	UNION .....	22111	0.10
LA .....	VERMILION .....	22113	0.20
LA .....	VERMILION .....	22113	0.20
LA .....	VERNON .....	22115	0.00
LA .....	WASHINGTON .....	22117	0.30
LA .....	WEBSTER .....	22119	0.10
LA .....	WEST BATON ROUGE .....	22121	0.20
LA .....	WEST CARROLL .....	22123	0.10
LA .....	WEST FELICIANA .....	22125	0.30
LA .....	WINN .....	22127	0.00
MS .....	ADAMS .....	28001	0.00
MS .....	ALCORN .....	28003	0.30
MS .....	AMITE .....	28005	0.40
MS .....	ATTALA .....	28007	0.20
MS .....	BENTON .....	28009	0.30
MS .....	BOLIVAR .....	28011	0.10
MS .....	CALHOUN .....	28013	0.10
MS .....	CARROLL .....	28015	0.20
MS .....	CHICKASAW .....	28017	0.10
MS .....	CHOCTAW .....	28019	0.20
MS .....	CLAIBORNE .....	28021	0.10
MS .....	CLARKE .....	28023	0.50
MS .....	CLAY .....	28025	0.20
MS .....	COAHOMA .....	28027	0.30
MS .....	COPIAH .....	28029	0.10
MS .....	COVINGTON .....	28031	0.00
MS .....	DE SOTO .....	28033	0.00
MS .....	FORREST .....	28035	0.40
MS .....	FRANKLIN .....	28037	0.00
MS .....	GEORGE .....	28039	0.40

State	County/Parish	FIPS	Class I price adjustment
MS	GREENE	28041	0.40
MS	GRENADA	28043	0.10
MS	HANCOCK	28045	0.30
MS	HARRISON	28047	0.30
MS	HINDS	28049	0.00
MS	HOLMES	28051	0.20
MS	HUMPHREYS	28053	0.20
MS	ISSAQUENA	28055	0.20
MS	ITAWAMBA	28057	0.30
MS	JACKSON	28059	0.30
MS	JASPER	28061	0.10
MS	JEFFERSON	28063	0.00
MS	JEFFERSON DAVIS	28065	0.00
MS	JONES	28067	0.40
MS	KEMPER	28069	0.30
MS	LAFAYETTE	28071	0.30
MS	LAMAR	28073	0.40
MS	LAUDERDALE	28075	0.10
MS	LAWRENCE	28077	0.00
MS	LEAKE	28079	0.20
MS	LEE	28081	0.30
MS	LEFLORE	28083	0.10
MS	LINCOLN	28085	0.00
MS	LOWNDES	28087	0.20
MS	MADISON	28089	0.20
MS	MARION	28091	0.40
MS	MARSHALL	28093	0.00
MS	MONROE	28095	0.20
MS	MONTGOMERY	28097	0.20
MS	NESHOBA	28099	0.20
MS	NEWTON	28101	0.10
MS	NOXUBEE	28103	0.30
MS	OKTIBBEHA	28105	0.20
MS	PANOLA	28107	0.30
MS	PEARL RIVER	28109	0.40
MS	PERRY	28111	0.40
MS	PIKE	28113	0.40
MS	PONTOTOC	28115	0.30
MS	PRENTISS	28117	0.30
MS	QUITMAN	28119	0.30
MS	RANKIN	28121	0.10
MS	SCOTT	28123	0.10
MS	SHARKEY	28125	0.20
MS	SIMPSON	28127	0.10
MS	SMITH	28129	0.10
MS	STONE	28131	0.40
MS	SUNFLOWER	28133	0.10
MS	TALLAHATCHIE	28135	0.10
MS	TATE	28137	0.00
MS	TIPPAH	28139	0.30
MS	TISHOMINGO	28141	0.30
MS	TUNICA	28143	0.00
MS	UNION	28145	0.30
MS	WALTHALL	28147	0.40
MS	WARREN	28149	0.00
MS	WASHINGTON	28151	0.10
MS	WAYNE	28153	0.40
MS	WEBSTER	28155	0.20
MS	WILKINSON	28157	0.40
MS	WINSTON	28159	0.20
MS	YALOBUSHA	28161	0.10
MS	YAZOO	28163	0.20
MO	BARRY	29009	0.20
MO	BARTON	29011	0.20
MO	BOLLINGER	29017	0.20
MO	BUTLER	29023	0.20
MO	CAPE GIRARDEAU	29031	0.20
MO	CARTER	29035	0.20
MO	CEDAR	29039	0.20
MO	CHRISTIAN	29043	0.20
MO	CRAWFORD	29055	0.40
MO	DADE	29057	0.20
MO	DALLAS	29059	0.20

State	County/Parish	FIPS	Class I price adjustment
MO	DENT	29065	0.40
MO	DOUGLAS	29067	0.20
MO	DUNKLIN	29069	0.50
MO	GREENE	29077	0.20
MO	HOWELL	29091	0.20
MO	IRON	29093	0.40
MO	JASPER	29097	0.20
MO	LACLEDE	29105	0.20
MO	LAWRENCE	29109	0.20
MO	MC DONALD	29119	0.20
MO	MADISON	29123	0.20
MO	MISSISSIPPI	29133	0.50
MO	NEW MADRID	29143	0.50
MO	NEWTON	29145	0.20
MO	OREGON	29149	0.20
MO	OZARK	29153	0.20
MO	PEMISCOT	29155	0.50
MO	PERRY	29157	0.20
MO	POLK	29167	0.20
MO	REYNOLDS	29179	0.20
MO	RIPLEY	29181	0.20
MO	SAINT FRANCOIS	29187	0.40
MO	SCOTT	29201	0.20
MO	SHANNON	29203	0.20
MO	STODDARD	29207	0.20
MO	STONE	29209	0.20
MO	TANEY	29213	0.20
MO	TEXAS	29215	0.20
MO	VERNON	29217	0.20
MO	WASHINGTON	29221	0.40
MO	WAYNE	29223	0.20
MO	WEBSTER	29225	0.20
MO	WRIGHT	29229	0.20
TN	BEDFORD	47003	0.30
TN	BENTON	47005	0.30
TN	BLEDSE	47007	0.60
TN	CANNON	47015	0.30
TN	CARROLL	47017	0.10
TN	CHEATHAM	47021	0.30
TN	CHESTER	47023	0.10
TN	CLAY	47027	0.30
TN	COFFEE	47031	0.60
TN	CROCKETT	47033	0.30
TN	DAVIDSON	47037	0.30
TN	DECATUR	47039	0.30
TN	DE KALB	47041	0.30
TN	DICKSON	47043	0.30
TN	DYER	47045	0.10
TN	FAYETTE	47047	0.10
TN	FENTRESS	47049	0.30
TN	FRANKLIN	47051	0.40
TN	GIBSON	47053	0.10
TN	GILES	47055	0.40
TN	GRUNDY	47061	0.60
TN	HARDEMAN	47069	0.10
TN	HARDIN	47071	0.10
TN	HAYWOOD	47075	0.30
TN	HENDERSON	47077	0.30
TN	HENRY	47079	0.10
TN	HICKMAN	47081	0.30
TN	HOUSTON	47083	0.30
TN	HUMPHREYS	47085	0.30
TN	JACKSON	47087	0.30
TN	LAKE	47095	0.10
TN	LAUDERDALE	47097	0.30
TN	LAWRENCE	47099	0.40
TN	LEWIS	47101	0.30
TN	LINCOLN	47103	0.40
TN	MC NAIRY	47109	0.10
TN	MACON	47111	0.30
TN	MADISON	47113	0.30
TN	MARSHALL	47117	0.30
TN	MAURY	47119	0.30

State	County/Parish	FIPS	Class I price adjustment
TN .....	MONTGOMERY .....	47125	0.30
TN .....	MOORE .....	47127	0.40
TN .....	OBION .....	47131	0.10
TN .....	OVERTON .....	47133	0.30
TN .....	PERRY .....	47135	0.30
TN .....	PICKETT .....	47137	0.30
TN .....	PUTNAM .....	47141	0.30
TN .....	ROBERTSON .....	47147	0.30
TN .....	RUTHERFORD .....	47149	0.30
TN .....	SHELBY .....	47157	0.10
TN .....	SMITH .....	47159	0.30
TN .....	STEWART .....	47161	0.30
TN .....	SUMNER .....	47165	0.30
TN .....	TIPTON .....	47167	0.10
TN .....	TROUSDALE .....	47169	0.30
TN .....	VAN BUREN .....	47175	0.60
TN .....	WARREN .....	47177	0.60
TN .....	WAYNE .....	47181	0.40
TN .....	WEAKLEY .....	47183	0.10
TN .....	WHITE .....	47185	0.30
TN .....	WILLIAMSON .....	47187	0.30
TN .....	WILSON .....	47189	0.30

9. Amend § 1007.13 by revising paragraphs (d) (1) through (4) to read as follows:

**§ 1007.13 Producer Milk.**

\* \* \* \* \*

(d) \* \* \*

(1) In any month of January through June, not less than 1 days' production of the producer whose milk is diverted is physically received at a pool plant during the month;

(2) In any month of July through December, not less than 1 days' production of the producer whose milk diverted is physically received at a pool plant during the month;

(3) The total quantity of milk so diverted during the month by a cooperative association shall not exceed 25 percent during the months of July through November, January, and February, and 35 percent during the months of December and March through June, of the producer milk that the cooperative association caused to be delivered to, and physically received at, pool plants during the month;

(4) The operator of a pool plant that is not a cooperative association may divert any milk that is not under the control of a cooperative association that diverts milk during the month pursuant to paragraph (d) of this section. The total quantity of milk so diverted during the month shall not exceed 25 percent during the months of July through November, January, and February, and 35 percent during the months of December and March through June of the producer milk physically received at such plant (or such unit of plants in the case of plants that pool as a unit pursuant to § 1007.7(e)) during the

month, excluding the quantity of producer milk received from a handler described in § 1000.9(c);

\* \* \* \* \*

10. Amend § 1007.81 by revising paragraph (a) to read as follows:

**§ 1007.81 Payments to the transportation credit balancing fund.**

(a) On or before the 12th day after the end of the month (except as provided in § 1000.90), each handler operating a pool plant and each handler specified in § 1000.9(c) shall pay to the market administrator a transportation credit balancing fund assessment determined by multiplying the pounds of Class I producer milk assigned pursuant to § 1007.44 by \$0.30 per hundredweight or such lesser amount as the market administrator deems necessary to maintain a balance in the fund equal to the total transportation credits disbursed during the prior June–February period to reflect any changes in the current mileage rate versus the mileage rate(s) in effect during the prior June–February period. In the event that during any month of the June–February period the fund balance is insufficient to cover the amount of credits that are due, the assessment should be based upon the amount of credits that would have been disbursed had the fund balance been sufficient.

\* \* \* \* \*

11. Amend § 1007.82 by revising paragraphs (a)(1), (b), (c)(1), removing paragraph (c)(2)(i), revising paragraphs (d)(2)(iii), (d)(3)(v), and redesignating paragraphs (c)(2)(ii), (c)(2)(iii), (c)(2)(iv) as (c)(2)(i), (c)(2)(ii) and (c)(2)(iii), and

revising newly redesignated paragraphs (c)(2)(i) and (c)(2)(iii) to read as follows:

**§ 1007.82 Payments from the transportation credit balancing fund.**

(a) \* \* \*

(1) On or before the 13th day (except as provided in § 1000.90) after the end of each of the months of January, February and July through December and any other month in which transportation credits are in effect pursuant to paragraph (b) of this section, the market administrator shall pay to each handler that received, and reported pursuant to § 1007.30(a)(5), bulk milk transferred from a plant fully regulated under another Federal order as described in paragraph (c)(1) of this section or that received, and reported pursuant to § 1007.30(a)(6), milk directly from producers' farms as specified in paragraph (c)(2) of this section, a preliminary amount determined pursuant to paragraph (d) of this section to the extent that funds are available in the transportation credit balancing fund. If an insufficient balance exists to pay all of the credits computed pursuant to this section, the market administrator shall distribute the balance available in the transportation credit balancing fund by reducing payments pro rata using the percentage derived by dividing the balance in the fund by the total credits that are due for the month. The amount of credits resulting from this initial proration shall be subject to audit adjustment pursuant to paragraph (a)(2) of this section.

\* \* \* \* \*

(b) The market administrator may extend the period during which transportation credits are in effect (i.e.,

the transportation credit period) to the month of June if a written request to do so is received 15 days prior to the beginning of the month for which the request is made and, after conducting an independent investigation, finds that such extension is necessary to assure the market of an adequate supply of milk for fluid use. Before making such a finding, the market administrator shall notify the Deputy Administrator of Dairy Programs and all handlers in the market that an extension is being considered and invite written data, views, and arguments. Any decision to extend the transportation credit period must be issued in writing prior to the first day of the month for which the extension is to be effective.

(c) \* \* \*

(1) Bulk milk received at a pool distributing plant from a plant regulated under another Federal order, except Federal Order 1005; and

\* \* \* \* \*

(2) \* \* \*

(i) The dairy farmer was not a "producer" under this order for more than 45 days during the immediately preceding months of March through May, or not more than 50 percent of the production of the dairy farmer during those 3 months, in aggregate, was received as producer milk under this order during those 3 months; and

\* \* \* \* \*

(iii) The market administrator may increase or decrease the milk production standard specified in paragraph (c)(2)(i) of this section if the market administrator finds that such revision is necessary to assure orderly marketing and efficient handling of milk in the marketing area. Before making such a finding, the market administrator

shall investigate the need for the revision either on the market administrator's own initiative or at the request of interested persons. If the investigation shows that a revision might be appropriate, the market administrator shall issue a notice stating that the revision is being considered and inviting written data, views, and arguments. Any decision to revise an applicable percentage must be issued in writing at least one day before the effective date.

(d) \* \* \*

(2) \* \* \*

(iii) Subtract the applicable Class I price specified in § 1000.50(a) for the county in which the shipping plant is located from the Class I price applicable for the county in which the receiving plant is located;

(3) \* \* \*

(v) Subtract the Class I price specified in § 1000.50(a) applicable for the county in which the origination point is located from the Class I price applicable at the receiving pool plant's location;

\* \* \* \* \*

**Note:** The following appendix will not appear in the Code of Federal Regulations.

#### **Appendix—Marketing Agreement Regulating the Handling of Milk in Certain Marketing Areas**

The parties hereto, in order to effectuate the declared policy of the Act, and in accordance with the rules of practice and procedure effective thereunder (7 CFR part 900), desire to enter into this marketing agreement and do hereby agree that the provisions referred to in paragraph I hereof, as augmented by the provisions specified in paragraph II hereof, shall be and are the provisions of this marketing agreement as if set out in full herein.

I. The findings and determinations, order relative to handling, and the provisions of § \_\_\_\_\_ to \_\_\_\_\_<sup>1</sup> all inclusive, of the order regulating the handling of milk in the \_\_\_\_\_<sup>2</sup> marketing area (7 CFR Part \_\_\_\_\_<sup>3</sup>) which is annexed hereto; and

II. The following provisions:

§ \_\_\_\_\_<sup>4</sup> Record of milk handled and authorization to correct typographical errors.

(a) Record of milk handled. The undersigned certifies that he/she handled during the month of \_\_\_\_\_<sup>5</sup>, \_\_\_\_\_ hundredweight of milk covered by this marketing agreement.

(b) Authorization to correct typographical errors. The undersigned hereby authorizes the Deputy Administrator, or Acting Deputy Administrator, Dairy Programs, Agricultural Marketing Service, to correct any typographical errors which may have been made in this marketing agreement.

Effective date. This marketing agreement shall become effective upon the execution of a counterpart hereof by the Department in accordance with Sec. 900.14(a) of the aforesaid rules of practice and procedure.

In Witness Whereof, The contracting handlers, acting under the provisions of the Act, for the purposes and subject to the limitations herein contained and not otherwise, have hereunto set their respective hands and seals.

Signature

By (Name) \_\_\_\_\_

(Title) \_\_\_\_\_

(Address) \_\_\_\_\_

(Seal) \_\_\_\_\_

Attest \_\_\_\_\_

[FR Doc. 08–881 Filed 2–25–08; 1:04 pm]

**BILLING CODE 3410–02–P**

<sup>1</sup> First and last section of order.

<sup>2</sup> Name of order.

<sup>3</sup> Appropriate Part number.

<sup>4</sup> Next consecutive section number.

<sup>5</sup> Appropriate representative period for the order.