considerable discussion the Committee unanimously determined that 1,196,109 pounds and 53 percent would be the most effective salable quantity and allotment percentage, respectively, for the 2009–2010 marketing year.

As noted earlier, the Committee's recommendation to establish salable quantities and allotment percentages for both classes of spearmint oil was made after careful consideration of all available information, including: (1) The estimated quantity of salable oil of each class held by producers and handlers; (2) the estimated demand for each class of oil; (3) the prospective production of each class of oil; (4) the total of allotment bases of each class of oil for the current marketing year and the estimated total of allotment bases of each class for the ensuing marketing year; (5) the quantity of reserve oil, by class, in storage; (6) producer prices of oil, including prices for each class of oil; and (7) general market conditions for each class of oil, including whether the estimated season average price to producers is likely to exceed parity. Based on its review, the Committee believes that the salable quantity and allotment percentage levels recommended would achieve the objectives sought.

Without any regulations in effect, the Committee believes the industry would return to the pronounced cyclical price patterns that occurred prior to the order, and that prices in 2009–2010 would decline substantially below current levels.

As stated earlier, the Committee believes that the order has contributed extensively to the stabilization of producer prices, which prior to 1980 experienced wide fluctuations from year-to-year. National Agricultural Statistics Service records show that the average price paid for both classes of spearmint oil ranged from $4.00 per pound to $11.10 per pound during the period between 1968 and 1980. Prices have been consistently more stable since the marketing order's inception in 1980, with an average price for the period from 1980 to 2007 of $12.77 per pound for Scotch spearmint oil and $9.98 per pound for Native spearmint oil.

According to the Committee, the recommended salable quantities and allotment percentages are expected to achieve the goals of market and price stability.

As previously stated, annual salable quantities and allotment percentages have been issued for both classes of spearmint oil since the order's inception. Reporting and recordkeeping requirements have remained the same for each year of regulation. These requirements have been approved by the Office of Management and Budget under OMB Control No. 0581–0178, Vegetable and Specialty Crops. Accordingly, this rule would not impose any additional reporting or recordkeeping requirements on either small or large spearmint oil producers and handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

AMS 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.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

In addition, the Committee's meeting was widely publicized throughout the spearmint oil industry, and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the October 15, 2008, meeting was a public meeting, and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit comments on this proposed rule, including the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/AMSv1.0/ams.fetchTemplateData.do?template=TemplateN&page=MarketingOrdersSmallBusinessGuide*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 60-day comment period is provided to allow interested persons the opportunity to respond to this proposal. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 985

Marketing agreements, Oils and fats, Reporting and recordkeeping requirements, Spearmint oil.

For the reasons set forth in the preamble, 7 CFR Part 985 is proposed to be amended as follows:

PART 985—MARKETING ORDER REGULATING THE HANDLING OF SPEARMINT OIL PRODUCED IN THE FAR WEST

1. The authority citation for 7 CFR Part 985 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. A new § 985.228 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 985.228 Salable quantities and allotment percentages—2009–2010 marketing year.

The salable quantity and allotment percentage for each class of spearmint oil during the marketing year beginning on June 1, 2009, shall be as follows:

(a) Class 1 (Scotch) oil—a salable quantity of 842,171 pounds and an allotment percentage of 42 percent.

(b) Class 3 (Native) oil—a salable quantity of 1,196,109 pounds and an allotment percentage of 53 percent.

Dated: January 8, 2009.

James E. Link,

Administrator, Agricultural Marketing Service.

[FR Doc. E9–604 Filed 1–13–09; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1000 and 1033

[AMS–DA–08–0049; AO–166–A77; Docket No. DA–08–06]

Milk in the Mideast Marketing Area; Recommended Decision and Opportunity To File Written Exceptions on Proposed Amendments to Tentative Marketing Agreement and Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule; recommended decision.

SUMMARY: This decision recommends adoption of a proposal to adjust Class I prices in certain counties of the Mideast Federal milk marketing order. Class I prices are recommended to be unchanged in 193 counties within the marketing area and to be increased by up to $0.20 per hundredweight in 110 counties in the southern portion of the marketing area. The original hearing proposal to adjust Class I prices is recommended for adoption, except it is modified to recommend a $0.20 increase in the Class I price at Charleston, West Virginia.

DATES: Comments must be submitted on or before March 16, 2009.

ADDRESSES: All comments received will be posted without change, including any personal information provided. 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.* Reference should be made to the title of the action and docket number.

FOR FURTHER INFORMATION CONTACT: Erin C. Taylor, Order Formulation and Enforcement Branch, USDA/AMS/Dairy Programs, STOP 0231–Room 2963, 1400 Independence Ave., SW., Washington, DC 20250–0231, (202) 720–7183, e-mail address: *erin.taylor@usda.gov.*

SUPPLEMENTARY INFORMATION: This decision recommends adoption of amendments that would adjust the Class I pricing surface in certain counties within the geographical marketing area of the Mideast milk marketing order.

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) (the Act), provides that administrative proceedings must be exhausted before parties may file suit in court. Under Section 608c(15)(A) of the Act, any handler subject to an order may request modification or exemption from such order by filing with USDA 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, USDA would rule on the petition. The Act 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 USDA'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 (AMS) has considered the economic impact of this action on small entities and has certified that this proposed rule will 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 production 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 farms. 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 August 2008, the time of the hearing, there were 7,376 dairy farms pooled on the Mideast order. Of these, approximately 6,927 dairy farms (or 93.9 percent) were considered small businesses.

During August 2008, there were 53 handler operations associated with the Mideast order (27 fully regulated handlers, 9 partially regulated handlers, 2 producer-handlers and 15 exempt handlers). Of these, approximately 43 handlers (or 81 percent) were considered small businesses.

Minimum Class I prices are determined in all Federal milk marketing orders by adding a location specific differential, referred to as a ''Class I differential,'' to the higher of an advance Class III and Class IV price announced by USDA. The amendments recommended for adoption in this decision provide for adjusting Class I prices for certain counties within the geographic boundaries of the Mideast marketing area. Minimum Class I prices charged to regulated handlers are applied uniformly to both large and small entities. Class I price increases would generate a higher marketwide pool value in the Mideast order by approximately $280,000 to $300,000 per month. Therefore, the proposed Class I price adjustments will not have a significant economic impact on a substantial number of small entities.

The Agricultural Marketing Service (AMS) 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.

A review of reporting requirements was completed under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). It was determined that these proposed amendments would have no impact on reporting, recordkeeping, or other compliance requirements because they would remain identical to the current requirements. No new forms are proposed and no additional reporting requirements would be necessary.

This recommended decision does not require additional information collection that requires clearance by the Office of Management and Budget (OMB) beyond currently approved information collection. The primary sources of data used to complete the approved forms are routinely used in most business transactions. The forms require only a minimal amount of information which 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 July 21, 2008; published July 24, 3008 (73 FR 43160).

Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to proposed amendments to the tentative marketing agreement and the order regulating the handling of milk in the Mideast marketing area. This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act 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 Ave., SW., Washington DC 20250–9200, by March 16, 2009. Six copies of the exceptions should be filed. All written submissions made pursuant to this notice 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. Some evidence was received that specifically addressed these issues and some of the evidence encompassed entities of various sizes.

A public hearing was held upon proposed amendments to the marketing agreement and the order regulating the handling of milk in the Mideast marketing area. 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 Cincinnati, Ohio, pursuant to a notice of hearing issued July 21, 2008.

The material issues on the record of hearing relate to:

1. Class I Prices—Adjustments and Pricing Surface

Findings and Conclusions

This decision recommends adoption of a proposal, published in the hearing notice as Proposal 1, with one modification. The proposal would increase Class I prices in 110 of 303 counties within the Mideast marketing area. The minimum Class I prices of the Mideast order are determined by adding a location-specific differential, referred to as a Class I differential, to the higher of an advance Class III or Class IV price announced by USDA. Class I differentials are location-specific by county and parish for all States of the 48 contiguous United States. Class I differentials for the Mideast order are specified in 7 CFR 1000.52.

A witness appeared on behalf of the proponents of Proposal 1, Dairy Farmers of America, Michigan Milk Producers, Inc., Foremost Farms USA Cooperative, Inc., Dairylea Cooperative, Inc., and National Farmers Organization, Inc., hereinafter referred to as ''DFA, *et al.*,'' in support of increasing Class I prices in the southern tier of the Mideast milk marketing area. All of these organizations are Capper-Volstead cooperatives. According to the witness, DFA, *et al.*, markets the majority of the milk that is pooled and priced under the terms of the Mideast marketing order. The witness testified that DFA, *et al.*, members market milk in the Mideast marketing area through MEMMA. The witness described MEMMA as a common marketing agency that shares customer orders, milk availability, balancing capacity and other information to provide for the efficient assembly and transportation of milk. The witness stated that DFA, *et al.*, are supporters of Federal milk marketing orders and emphasized that the economic livelihood of dairy farmers would be diminished in their absence.

The DFA, *et al.*, witness testified that recent changes to the Class I price surface and transportation credit provisions in the Appalachian, Southeast and Florida marketing orders [1] (southeastern orders) have caused difficulties in supplying fluid milk processing plants in the southern tier of the Mideast marketing area. The witness testified that those changes increase the blend prices received by farmers whose milk is pooled on the southeastern orders and also provide more money to offset transportation costs of supplemental milk delivered to southeastern plants. The witness testified that these combined changes to the southeastern orders attract milk away from Mideast order fluid milk plants and justify the need for a temporary increase in the Class I price surface in the southern tier of the marketing area.

The DFA, *et al.*, witness testified regarding the need for making regional, temporary changes to the Class I price surface. The witness testified that adequate data do not currently exist to revise the Class I price surface on a national basis, and that the problem in the Mideast order should be addressed now. The witness noted that Proposal 1 should be considered a temporary adjustment that may be changed in the future if a national hearing should occur.

The DFA, *et al.*, witness asserted that the purpose of Class I differentials are to generate adequate revenue to assure that the fluid milk market is adequately supplied. The witness testified that increases in transportation costs combined with recent changes affecting Class I prices to the southeastern orders have made it more difficult to service Mideast fluid milk plants. Therefore, the witness concluded, a temporary increase in the Class I prices in the southern tier of the Mideast marketing area is warranted.

The DFA, *et al.*, witness relied on data prepared by the Market Administrator to compare the volume of milk produced within the marketing area boundaries with the volume of milk actually pooled on the Mideast order. The data revealed total milk production by state and county that is either: Pooled on the Mideast order; usually associated with but not pooled on the order during the specified month; or pooled on another Federal order. The witness was of the opinion that milk produced within the boundaries of the Mideast marketing area but not pooled on the Mideast order can be assumed to have been marketed elsewhere for a higher return. The witness concluded from these data that the milk supply for the Mideast marketing area is concentrated in the central to northern regions of the marketing area.

The DFA, *et al.*, witness described the analysis used to examine the milk supply and demand situation in the Mideast marketing area. The witness explained how they divided the Mideast marketing area into northeast, northwest and southern regions. DFA, *et al.*, then requested that the Market Administrator calculate summary statistics for each region for January, April, August and November of 2007, and January and April of 2008.

The DFA, *et al.*, witness reviewed market administrator data that they had requested prior to the hearing that showed: (1) The volume of milk produced on farms located in the defined supply regions either pooled on the Mideast order or pooled on another Federal order and delivered to a pool distributing plant in the defined supply region; (2) The pounds of bulk milk physically received at distributing plants located in the defined supply regions; (3) The net of the two figures to demonstrate a milk deficit or surplus situation in each of the three regions; and (4) The hauling distances of producer milk to distributing plants within each of the three regions.

The DFA, *et al.*, witness described the northwest region of the marketing area as Michigan, northern Indiana and northwest Ohio. According to the witness, the northwest area has the largest volume of milk production and the largest volume of Class I demand when compared to the other two areas, while also being subject to the two lowest valued Class I differential zones in the Mideast marketing area. The witness characterized the northwest region as the reserve supply region for the Mideast marketing area since milk

[1] See Tentative Partial Decision, Published February 29, 2008 (73 FR 11194).

production is greater than fluid milk demand and milk is frequently transported from this region into the other two regions. The witness said that the data indicated that the average hauling distance for milk delivered to distributing plants in the northwest region is 72 miles.

The DFA, *et al.*, witness described the northeast region of the Mideast marketing area as the northeastern half of Ohio and the western portion of Pennsylvania. The witness testified that the northeast region is also an area where milk production exceeds fluid milk demand and that the average hauling distance for milk delivered to distributing plants in the region is 70 miles.

The DFA, *et al.*, witness described the southern region of the marketing area as the southern portion of Indiana, southern portion of Ohio, northeast portion of Kentucky and the western half of West Virginia. The witness testified that, on average, the local milk supply for this region meets only 60 percent of fluid milk demand, making it the only deficit region of the marketing area. The southern region of the marketing area absorbs all of the local milk supply that is not attracted to the Appalachian or Southeast orders and relies on milk supplies from the northern tier of the marketing area to balance fluid milk needs, the witness said. The witness noted that the average hauling distance of milk delivered to distributing plants in the region is 133 miles, which in the witness' opinion represents milk produced outside the region being delivered to plants within the region. The witness added that the average hauling distance in this region is over 60 miles further than in the other two regions.

The DFA, *et al.*, witness, relying on Market Administrator data, detailed the competition for milk supplies from non-pool plants within the marketing area. The witness concluded from the data that there are a significant number of non-pool manufacturing plants located near the reserve supply regions of the marketing area. The witness was of the opinion that the Class I prices in the southern tier of the marketing area should be increased to attract milk away from these manufacturing operations for higher-valued fluid use by compensating farmers for the higher transportation costs they incur to service these fluid plants.

The DFA, *et al.*, witness testified that Class I differentials have only been modified twice in the past 23 years, once as a result of the 1985 Farm Bill, and another as a result of Federal order reform in 2000. The witness noted that the changes made to the Class I price surface during Federal order reform in 2000 were based on data from the mid-1990's. The witness said that there have been significant changes in marketing conditions since then, notably the number of dairy farms, the increase in size of existing dairy farms, population increases in the southern region of the Mideast marketing area and a shift in milk production to the northern region of the marketing area. The witness was of the opinion that the Class I price surface currently in place in the Mideast marketing area is too ''flat,'' and does not encourage the movement of milk from the supply region in the north to deficit regions in the south. The witness noted that the difference in Class I differentials between southern Michigan and Cincinnati, Ohio, for example, is $0.40, which according to the DFA, *et al.*, calculation represents only 26 percent of the actual transportation cost that a milk hauler would incur.

The DFA, *et al.*, witness relied on two methodologies to illustrate the inadequacies of the Class I price surface in the southern tier of the Mideast marketing area. The witness said that the first method examined milk transportation data provided by MEMMA, and the second method paralleled the methodology relied on to implement the adjustments to Class I prices in the southeastern orders. The witness used Market Administrator data to select eleven high milk production counties that, according to the witness, represent ''reserve'' supply areas for the Mideast market.

The DFA, *et al.*, witness described the MEMMA methodology used to determine the differences between actual transportation costs and Class I differential levels. The witness first presented diesel fuel cost data from the Energy Information Agency (EIA) that showed recent increases in fuel costs, with an average fuel cost of $4.52 a gallon from the beginning of 2008 until the time of the hearing (August 2008). The witness described how fuel costs are used to determine milk hauling costs and testified that MEMMA utilizes a $2.20 base hauling rate plus a monthly fuel surcharge to calculate total hauling rates. The witness relied on a 47 percent fuel surcharge for this calculation which is, according to the witness, MEMMA's average surcharge from the beginning of the year to the time of the hearing. The witness said that this results in a hauling rate of $3.23 per loaded mile, or $1.59 per cwt for the 235 mile haul from Clinton County, Michigan, (reserve area) to Eastside Dairy in Anderson, Indiana (deficit area).

The DFA, *et al.*, witness then calculated the net dollars provided by the differences in the Class I differentials to offset transportation costs between the eleven reserve counties they had previously selected and the ten fluid plants located in the deficit southern region. For example, the differences in the Class I differential levels would provide $0.20 per cwt to offset the transportation cost of the haul from Clinton County, Michigan, to Eastside Dairy in Anderson, Indiana. The witness used these data to determine the portion of transportation costs that are not covered by the differences in the Class I differential levels. For all of the supply counties and plant locations, the average shortfall was $1.76 per cwt, noted the witness. Accordingly, the witness concluded from the MEMMA methodology that the current Class I differential levels in the southern region of the Mideast marketing area are inadequate.

The DFA, *et al.*, witness then examined the methodology used to determine temporary increases in the Class I prices in the southeastern marketing orders to formulate the proposed Class I price adjustments in the southern tier of the Mideast marketing area. The witness noted that the basic foundation for deriving the temporary adjustments to the Class I price surface in the southeastern orders was the identification of potential supply areas. Once identified, the areas were relied upon to calculate the least-cost Class I price adjustment based on the farthest point of milk demand.

The DFA, *et al.*, witness testified that this methodology utilized the same diesel fuel rate from the EIA as was used in the previously discussed MEMMA example. Using the same methodology as in the proceeding for the southeastern orders, the witness determined a base period for fuel costs (May–June 2003), determined the increase in costs from the base period to the present and determined the fuel cost adjustor ($0.44) to be added to the $2.20 MEMMA base haul rate. This rate was divided by the 480 cwt of milk in a typical tanker load to determine that rate per cwt per mile of $0.00521. This rate was then used to compare the costs of alternative reserve supplies for the three regions of the Mideast marketing area.

The DFA, *et al.*, witness further explained that they relied on the methodology previously used to formulate the Class I price adjustments in their proposal. The witness offered the methodology used in the southeastern Class I pricing. The witness noted that the record of the southeastern proceeding identified five

potential alternative supply points surrounding the southeastern region of the country that could potentially supply the Miami market. The witness testified that the distances between the supply points and the demand point were multiplied by the mileage rate (described in the prior paragraph), and was further reduced by 20 percent to avoid having minimum prices set at actual transportation costs. The adjusted haul rate was then added to the current Class I differential for the supply point, yielding an ''acquisition cost'' as described by the witness. The witness explained that the difference between the acquisition cost and the actual Class I differential were used to suggest a reasonable temporary adjustment to Class I prices.

The DFA, *et al.*, witness testified that this methodology was repeated for six plants in the southern tier of the Mideast marketing area. The six plant locations were Indianapolis, IN, Marietta, OH, Newark, OH, Cincinnati, OH, Springfield, OH, and Charleston, WV. The witness stated that these plant locations represent the geographic spread of plants within the southern tier of the marketing area. DFA, *et al.*, then chose six potential supply points from the eleven previously determined counties which serve as the reserve supply of the order. The witness testified that for Indianapolis, IN, Elkhart County, IN, the least-cost alternative, was $2.55 per cwt. As compared to the current differential of $2.00, the $2.55 per cwt figure suggested an adjustment of $0.55 per cwt. The witness conducted the same least-cost alternative comparison for each of the five other plant locations.

The DFA, *et al.*, witness summarized the above conclusions in the context of the existing Class I differential levels and Class I price adjustments. The witness testified that under Proposal 1 the plants in the current $2.00 differential zone would be in a newly proposed zone that has a 15-cwt Class I price adjustment which should not substantially change existing competitive relationships. Similarly, noted the witness, plants in the current $2.20 differential zone, except the United Dairy plant in Charleston, WV, would be in a newly proposed zone that has a 40-cent Class I price adjustment. The witness explained how the location of the United Dairy plant in Charleston, WV, justified a greater adjustment to the Class I price than any other plant in the southern tier of the marketing area because of its distance from reserve supplies. Accordingly, DFA *et al.*, proposed that a $0.40 adjustment (increase) in the Class I price at Charleston, WV, will better align with the Class I prices applicable to their nearest three competitors, Dean Foods, Louisville, KY; Winchester Farms Dairy, Winchester, KY; and Flav-O-Rich Inc., London, KY. The witness noted that these competitor's Class I price levels include the $0.15 transportation credit balancing fund assessment for supplemental milk needed for Class I use that is administered in the Appalachian order.

The DFA, *et al.*, witness explained how they analyzed the cost of moving packaged milk between reserve supply locations and distributing plants (demand points) in the southern tier of the marketing area to gauge the expected impacts on the competitive relationships between handlers in the southern tier of the Mideast marketing area. The witness testified that although they do expect the competitive relationships between handlers to be affected by the proposed adjustment in Class I prices, they did not find any instance wherein the proposed changes exceeded the cost of moving packaged milk between handlers. The witness explained that by calculating the total acquisition and distribution costs for each supply and demand combination as the Class I differential at the supply location plus the cost of moving the packaged milk to the demand location, they found no instances where the cost of acquiring and moving packaged milk exceeded the proposed Class I price levels. Therefore, the witness concluded, the proposed Class I price adjustments are reasonable because they do not provide an incentive for uneconomic movements of milk.

The DFA, *et al.*, witness withdrew the proponents' original contention that emergency conditions exist to warrant the omission of a recommended decision, contingent, the witness said, on this proceeding adhering to the deadlines established by the 2008 Farm Bill. The witness was of the opinion that a recommended decision issued within 90 days of the close of the hearing would be reasonable.

A post-hearing brief filed by DFA, *et al.*, reiterated their testimony describing the market conditions for fluid milk in the Mideast marketing area. The brief reasserted proponent's claims that: the southern region of the marketing area is a deficit market; that the Class I differentials are too low to cover the costs of transporting an adequate supply of milk from the surplus northern regions to distributing plants in the southern region; and that, recent changes to the Class I prices in the southeastern orders has made it difficult for local distributing plants in the southern region of the Mideast marketing area to attract and maintain an adequate supply of fluid milk.

The DFA, *et al.*, brief addressed opposition that existing price relationships between plants should not be disturbed by adjusting Class I prices. DFA, *et al.*, wrote that the record shows that costs of supplying fluid plants have increased and the Class I price adjustments for plants in the southeastern orders has changed such that the competitive relationships between plants has already been altered. DFA, *et al.*, also asserted that the opponents to their proposal claiming that the Class I price surface should be changed via a national hearing is, in actuality, an attempt aimed at stalling any increase in their regulated minimum prices. In this regard, DFA, *et al.*, wrote that the proposed Class I price adjustments are justified by local supply and demand conditions.

The DFA, *et al.*, brief also expressed opposition to Dean's proposal of decreasing Class I differentials in the northern regions of the marketing area (to be discussed later in this decision). DFA, *et al.*, found fault with Deans' premise that the appropriate remedy to the increased cost of supplying plants in the southern region of the marketing area is to lower prices paid to dairy farmers in the northern regions.

A witness testifying on behalf of United Dairy, Inc. (United Dairy) opposed the adoption of Proposal 1. United Dairy operates three fluid milk processing plants in the Mideast marketing area. The witness was of the opinion that Proposal 1 singles out the United Dairy plant in Charleston, WV, for an unnecessarily large increase in its Class I price of $0.40 per cwt. The witness said that such a large increase would put the Charleston plant at a competitive disadvantage to its primary competitor, the Dean Foods' Broughton Foods plant in Marietta, OH, located 85 miles to the north.

The United Dairy witness explained that the Charleston, WV, plant is located in the $2.20 differential zone (the same as Cincinnati, OH), while the Marietta, OH, plant is located in the $2.00 differential zone. Proposal 1 seeks to increase the Class I price at the Marietta, OH, plant by $0.15, while it proposes a $0.40 Class I price increase for the Charleston, WV, plant, stated the witness. The witness highlighted that the Charleston plant would be the only regulated distributing plant in essentially a new price zone. The witness said that despite already paying a higher regulated milk price because of the difference in Class I differentials ($2.20 versus $2.00), the Charleston,

WV, plant has been able to compete for sales with the Marietta, OH, plant. However, if Proposal 1 is adopted, the witness explained, the Charleston, WV, plant will be subject to a $0.45 cost disadvantage relative to their Marietta, OH, plant competitor.

The United Dairy witness testified that despite proponent claims that the Charleston, WV, plant is the hardest plant in the marketing area to service, United Dairy has had no difficulty in attracting an adequate milk supply to meet its demand. The witness also countered proponent claims that it is difficult to attract milk supplies to the southern region of the marketing area. The witness said that MEMMA supplies most of the plants in the region, and is therefore able to shift its farm routes between customers to meet demand.

The United Dairy witness estimated that a 40-cent increase in its Class I price equates to a 3.5 cent increase per gallon of milk they produce. The witness asserted that competition for sales between plants can be won, or lost, over pennies. An increase of 3.5-cents per gallon would place the Charleston plant at a severe disadvantage and most likely result in lost sales, concluded the witness. While seeing no need to increase in the Class I price, the witness said that any increase found needed by USDA should assure that the competitive relationship between the Charleston, WV, and Marietta, OH, plants be maintained.

A post-hearing brief filed on behalf of United Dairy faulted DFA, et al's., reasoning for increasing the Class I prices in the Mideast marketing area as being tied to recent changes to the Class I prices in the three southeastern orders. United Dairy stated that the changes in the southeastern orders were made because the chronic milk deficit situation in those orders necessitated higher Class I prices aimed at attracting milk from states such as Ohio and Michigan to supply those fluid plants. United Dairy asserted that increasing Class I prices in the southern tier of the Mideast marketing area would undermine the steps taken in the southeastern orders to alleviate the milk supply problem.

United Dairy also argued in brief that proponents did not demonstrate that plants in the southern tier of the Mideast market are having difficulties attracting an adequate supply of fluid milk. United Dairy claimed that at the time of the hearing there was no data available to support the proponents claim because the changes in the southeastern orders did not become effective until May 1, 2008, and data from that month had not yet been released. Regardless, United Dairy asserted that the states comprising the Mideast order have experienced an increase in milk production while Class I demand has decreased 8.8 percent January 1, 2000.

United Dairy's brief reiterated testimony that its Charleston, WV, plant has not had difficulty acquiring an adequate milk supply. The brief stated that the Charleston, WV, plant provides a market outlet for independent producers in the Mideast order, and serves a vital role in supplying milk to school and rural customers in West Virginia. United Dairy wrote that increasing the Class I price of that plant by $0.40 would put it at a competitive disadvantage to plants located in areas where Class I prices are not also increased by $0.40. Lastly, United Dairy argued that emergency conditions that would warrant the omission of a recommend decision do not exist.

An Ohio dairy farmer supplier of United Dairy testified in opposition to Proposal 1. The witness agreed with proponent testimony that transportation costs have increased, but said that adjusting Class I prices could financially harm certain plants. The witness stated that it is important for plants to remain viable so that farmers have numerous market outlets for their milk.

The witness testified that their farm supplies the United Dairy plant in Martins Ferry, OH. The witness said that out of a total $0.92 per cwt that the milk hauler charges, they pay $0.82 and United Dairy pays $0.10. The witness disagreed with the methodology used by proponents in determining the proposed Class I price adjustments because, in the witness' opinion, the proposed adjustments are not equitable across distributing plants.

A witness testifying on behalf of The Kroger Company Manufacturing Group (Kroger) opposed the adoption of Proposal 1. According to the witness, Kroger operates three fluid distributing plants regulated by the Mideast order. The witness testified that two Kroger plants, Crossroad Farms Dairy located in Indianapolis, Indiana, and Tamarack Farms Dairy located in Newark, Ohio, are located in the pricing zones that would be increased if Proposal 1 was adopted. The witness testified that Kroger pays its suppliers over-order premiums and fuel surcharges which have increased recently due to higher fuel costs. The witness indicated that none of their suppliers have indicated problems in supplying any Kroger plants. The witness said that if Proposal 1 is adopted the Class I prices at both Kroger plants would increase by $0.15 per cwt.

The Kroger witness asserted that the proposed Class I price adjustments would alter plant price relationships that date back to the 1985 Farm Bill. These proposed differentials would place the Kroger plants in a difficult competitive situation, the witness said. According to the witness, the Kroger plants compete for sales with plants located to the north that, under Proposal 1, would not see a price adjustment.

The Kroger witness argued that much of the milk produced in the Mideast marketing area is actually committed to supplying plants located in the deficit southeastern orders. The witness concluded that if the southern region of the Mideast marketing area was really a deficit market, as the proponents purport, then much of the milk that currently goes south would instead stay in the Mideast marketing area. The witness was of the opinion that current milk supplies in the Mideast are more than adequate to meet demand rendering an increase in Class I prices unnecessary.

The Kroger witness indicated that, in the future, if the southern region of the marketing area has problems acquiring a milk supply, then a hearing to consider the promulgation of a new order in the southern region should be held. The witness stated that if such a new order was created then the monies generated within the new order would only be shared amongst producers serving that market, instead of being shared with all the producers in the Mideast market through the blend price. The witness also noted that emergency conditions do not exist to warrant exclusion of a recommended decision.

A witness testifying on behalf of Dean Foods (Dean) opposed the adoption of Proposal 1. According to the witness, Dean owns and operates eleven distributing plants regulated by the Mideast milk marketing order. The witness' testimony regarding the opposition to Proposal 1 was supported by Prairie Farms. The witness said that if Proposal 1 is adopted, three of the eleven Dean plants would see an increase in their Class I price.

The Dean witness was of the opinion that this rulemaking proceeding is the result of regulatory changes made to the Class I prices in the southeastern orders effective May 1, 2008. The witness stated that the Class I pricing changes in those orders and the proposed changes in the Mideast order essentially run counter to USDA's policy of a nationally coordinated Class I price surface. The witness reviewed the nine key criteria used by USDA in establishing the nationally coordinated Class I price surface (effective January 1, 2000), in

the context of the changes proposed in this rulemaking proceeding. The witness was of the opinion that the proposed increases would send inappropriate market signals to farmers to produce more milk despite the overall milk surplus observed in the Mideast order. The witness said that adjusting Class I prices not only changes the value of milk at that location, but it also changes the relative value of that milk at other locations, as was the case in the southeastern orders. The witness insisted that this underscores the importance of a nationally coordinated Class I price surface. In keeping with this rationale, the witness claimed that adjustments to Class I prices on an order-by-order basis would lead to disorderly marketing conditions.

The Dean witness noted that the proposed Class I price increases could lead to increased payouts from the Southeast and Appalachian transportation credit funds which use the differential in the county where milk is produced to compute the payout. The witness said that this would lead the transportation credit funds to be drawn down faster than otherwise would occur. On cross examination the witness admitted that the Southeast and Appalachian order transportation credit funds would only be drawn down faster if milk produced in the southern region of the Mideast order was pooled in the Southeast or Appalachian orders on a seasonal basis.

The Dean witness was of the opinion that it is too soon to tell if Class I price adjustments in the southeastern markets has provided handler equity in regards to raw product costs. Until the effect on handler equity can be determined in the Southeast, there should be no changes in the Class I prices in the Mideast, the witness said. The witness also stated that higher Class I prices will alter the competitive structure in the region and negatively affect handlers in the Mideast.

The Dean witness argued that the proposed Class I price increases would provide more incentive than is necessary to encourage milk to move into the southern region of the marketing area. The witness also objected to the proponent's attempt to divide the Mideast market into three regions. The witness said that the data are insufficient to determine whether the regions as proposed by proponents are accurate depictions of three separate regions within the marketing area.

The Dean witness was of the opinion that the marketing conditions in the Mideast order are different than the marketing conditions in the southeastern orders. Therefore, the witness said, USDA should consider a different approach to solving the problem in the Mideast marketing area. The witness stated that the easiest way to solve the milk supply issues of the Mideast would be for the USDA to reverse the decision to increase Class I prices in the southeastern orders and then deny the adoption of Proposal 1. Alternatively, the witness said that USDA could suspend the current hearing until such time as more data capable of documenting the impact southeastern order changes have had on Mideast milk movements becomes available. Alternative proposals, including those seeking to divide the marketing area into three separate orders, could then be made, the witness said. The witness then offered data that purported to reveal the marketwide pools that would result, if the Mideast order were divided into three separate marketing orders.

The Dean witness offered an alternative proposal at the hearing to lower the Class I differentials (and thus Class I prices) in the northern regions of the Mideast marketing area. The witness said that proponents have relied on Class I differential relationships between the northern surplus area and the southern deficit area to justify the proposed Class I price adjustments (increases). The witness insisted that decreasing the differentials in the north would also provide market signals to encourage milk to move from north to south. The witness proposed that the Class I prices in the northern surplus regions of the Mideast marketing area be decreased by anywhere between $0.05 to $0.15 per cwt.

The Dean witness stated that emergency conditions warranting the omission of a recommended decision do not exist.

Another Dean witness testified in opposition to the adoption of Proposal 1. The witness said that data provided by the proponents demonstrate that the milk supply in the Mideast marketing area is, on the whole, sufficient to meet in-area demand. The problem, the witness said, is the lack of incentives to move milk into the southern deficit region. From these data, the witness concluded that the defined marketing area is too large for marketwide pooling to properly function because Class I revenues from the south are being shared with all producers in the marketing area and diluting the incentives to supply plants in the deficit region.

The Dean witness was of the opinion that blend price differences between marketing orders encourages milk movements to deficit areas. The witness insisted that the proponent's data supports the theory that there should be three separate orders within the Mideast marketing area. The witness argued that if a separate order were in place for the southern region of the Mideast marketing area, the Class I utilization would be higher than that of the existing marketing area. The witness concluded that separate orders would generate blend price differences large enough to encourage milk to move south without the need for higher Class I prices.

A witness testifying on behalf of National Dairy Holdings (NDH) also opposed the adoption of Proposal 1. According to the witness, NDH is a fluid processor that owns and operates two distributing plants regulated by the Mideast order. The witness said that Meyer Dairy is the only fluid distributing plant owned and operated by National Dairy Holdings (NDH) that would be affected by the proposed Class I price increases. The witness stated that Meyer Dairy has not experienced any difficulty in acquiring a milk supply. If USDA determines that additional incentives are necessary to move milk to the southern region of the Mideast marketing area, then the witness is supportive of Dean's alternative proposal to lower Class I differentials in the northern region of the marketing area. The witness was of the opinion that the same desired results could be obtained by lowering differentials in the northern region of the marketing area thus making the price relationships more attractive so as to move milk south.

The NDH witness estimated that adoption of Proposal 1 would increase their milk costs anywhere from 2 cents to 3.5 cents per gallon relative to their competitors. However, the witness said that some of their competitors would also see an increase in their Class I differentials, albeit at a lesser amount than Meyer Dairy. The witness speculated that the proposed cost increases could result in lost contracts.

The NDH witness concurred with proponents that fuel and transportation costs have increased since the current Class I price surface became effective on January 1, 2000, and that one way of combating the resulting milk supply problem is to increase Class I prices in the deficit markets. However, the witness argued that the best solution would be to lower differentials in the north so that the new price relationship would encourage milk to service the deficit south. According to the witness, this change would provide the same result as Proposal 1, but without raising costs to consumers. The witness purported that checkout scanner data

from retail stores show a correlation between the Class I price increases in the southeastern orders and a reduction in fluid milk sales. During the months of June and July 2008, fluid milk sales in Atlanta and Miami were down 8.5 percent and 7.9 percent, respectively, relative to the same period in 2007.

A post-hearing brief submitted on behalf of Dean, National Dairy Holdings and Prairie Farms, hereinafter referred to as ''opponents brief,'' expressed continued opposition to the adoption of Proposal 1. The brief explained that proponents provided little evidence to prove that recent changes to Class I prices in the southeastern orders have made obtaining an adequate milk supply difficult for fluid plants located in the southern tier of the Mideast order. The brief noted that since the changes in the southeastern orders did not become effective until May 1, 2008, complete data capable of accounting for the impacts of the changes has yet to be compiled and published by the Market Administrator offices. To counter proponents claim that more milk is moving into the southeastern orders, the opponents brief cited Dairy Market News Statistics showing that, for the week ending on October 10, 2008, fewer loads of milk were shipped into Florida and other southeastern States than in the same week in 2007.

The opponents brief also argued that proponents attempt to divide the Mideast marketing area into three sub-regions resulted in arbitrary data. Opponents claimed that in defining the available milk supply for any of the three sub-regions, proponents did not take into account what milk was actually available and whether other near-by milk supplies were available.

The opponent's brief stated that the Mideast marketing area as a whole is a reserve supply of milk for the southeastern orders. It contended that the purpose of nationally coordinated Class I price surface is to bring forth an adequate supply of milk, therefore there is no justification for increasing Class I prices in reserve supply areas such as the Mideast. The brief further argued that increasing the Class I prices in the southern tier of the Mideast marketing area would cause disorderly marketing conditions because milk that is ineligible for transportation credits in the southeastern orders would seek to move to the higher priced zones in the Mideast marketing area. However, the opponents brief disagreed with the DFA, et al.'s, use of transportation credits in the Appalachian and Southeast orders as a factor in determining appropriate Class I price adjustments. Opponents stated that transportation credits serve a different economic purpose and should not be a factor in considering if Class I prices should be increased in the Mideast.

The opponents brief also argued that Class I prices should be addressed on a national, not order-by-order basis, as was done in the southeastern orders and as is proposed in the Mideast. According to Dean, the proponents provided no justification to abandon past USDA precedent for maintaining a nationally coordinated Class I price structure.

The opponents brief summarized the alternative proposal they offered at the hearing to decrease Class I differentials in the northern surplus areas of the Mideast marketing area. (Prairie Farms did not offer support of Dean's alternative proposal.) In brief, Dean wrote that in areas of milk surplus, the correct market signal to farmers is a lower price to encourage them to produce less. Dean concluded that the subsequent decrease in production would, in turn, lead to an increase in milk prices.

In brief, opponents continued to argue that proponents provided no evidence demonstrating an emergency situation that would warrant omission of a recommended decision. The brief stated that the significant period of time between when the proponents first requested data for a Mideast Class I price surface hearing (September 2007) and their actual hearing request (June 2008) demonstrates that no emergency exists. Therefore, Dean wrote, the public should be provided an opportunity to comment on USDA's decision before implementation of any proposed changes.

A witness appearing on behalf of Nestle USA (Nestle) testified in opposition to Proposal 1. According to the witness, Nestle is a milk manufacturer who operates one fluid distributing plant regulated by the Mideast order which is located in Anderson, IN, where the proponents have proposed a $0.15 adjustment in the Class I price. The witness said that Nestle's milk supplier has not indicated any difficulty supplying milk to the Nestle plant. The witness stated that the Nestle plant only recently opened, but when Nestle was originally considering a location for the plant they were approached by multiple suppliers in the Mideast marketing area, all of whom indicated that providing a reliable milk supply to the plant in Anderson, IN, would not be difficult.

The Nestle witness referred to proponent data indicating that the average cost to supply a plant in Anderson, IN, was $1.60 per cwt more than the Class I differential at the location. According to the witness, Nestle already pays its supplier, on average, over-order premiums in excess of this amount as well as a fuel surcharge for milk delivered to the plant.

The Nestle witness testified that the Anderson plant primarily produces flavored milk products that exhibit a great deal of sensitivity to price changes. The witness also asserted that the Nestle flavored milk products compete more directly with soft drinks, bottled water and orange juice, than with milk. Therefore, the witness said, any price increase in their products would result in lost sales to competing non-dairy products. The witness also testified that products produced at the Anderson plant are marketed nationwide and must compete with products produced at plants located in counties that are not subject to a proposed increase to their Class I price. The witness concluded that there is no milk shortage problem in the southern region of the Mideast marketing area and as such, Proposal 1 should be denied.

A post-hearing brief was submitted on behalf of Associated Milk Producers Inc., Bongards Creamery, Family Dairies USA, First District Association, Manitowoc Milk Producers Association, Mid-West Dairymen's Company, Milwaukee Cooperative Milk Producers and the Wisconsin Department of Agriculture, Trade and Consumer Protection. The brief stated that collectively these organizations are members of the Midwest Dairy Coalition (MDC). MDC argued that proponents have not demonstrated that there is a milk deficit in the Mideast marketing area and as such, they are opposed to the adoption of Proposal 1. MDC stated that if there is a milk supply problem in the Mideast as a result of effectively changing Class I differential levels in the southeastern orders then the proponents have the ability to negotiate higher over-order premiums to cover any higher supply costs.

MDC also addressed the broader issue of effectively changing Class I differentials on an order-by-order, rather than national basis. They argued that such changes not only have local, but also national implications and should therefore be addressed in a larger national framework.

Discussion and Findings

At issue in this proceeding is the consideration of proposed adjustments to Class I prices in the southern region of the Mideast milk marketing area as a means of ensuring an adequate supply of milk for fluid use. Adjustments to

Class I prices in the southern tier of counties in the marketing area are recommended for adoption herein and result in a change to the Class I pricing surface. The adjustments to Class I prices are specified in the order language. Providing for higher Class I prices under the order in the counties that make up the southern tier of the marketing area will help attract an adequate supply of fluid milk to distributing plants and will increase the blend prices to dairy farmers who deliver milk to those plant locations.

The minimum Class I prices of the Mideast order are set by adding a location-specific differential, referred to as a Class I differential, to the higher of an advance Class III or Class IV price announced by USDA. The Class I differentials are location-specific by county, parish or city for all States of the 48 contiguous United States. These Class I differentials were adopted on January 1, 2000, and are specified in CFR section 1000.52.

The proponents, DFA, *et al.*, who collectively market more than 50 percent of the producer milk pooled on the Mideast order maintain that it has become increasingly costly to supply fluid distributing plants located in the southern tier of the Mideast marketing area. Their claim is based on two factors: (1) Recent adjustments to Class I prices of the southeastern orders have drawn milk, that previously would have been utilized by fluid milk plants in the southern region, away from the Mideast order; and (2) Transportation costs have increased such that the current Class I differentials do not offer sufficient pricing incentives to cover the cost of transporting milk from reserve northern surplus regions to the deficit southern region of the marketing area.

Proponents divided the marketing area into three separate regions and presented data to examine marketing conditions within the marketing area and to explain how the southern region of the marketing area is consistently milk deficit. Record evidence demonstrates a significant difference in the volume of milk delivered to pool distributing plants in the southern region relative to the volume of milk produced in the region and either pooled on the Mideast order, or pooled on another order and delivered to a pool distributing plant located in the southern region of the Mideast marketing area. For example, during April 2008, 189.8 million pounds of producer milk was received at distributing plants located in the southern region. However, during that month only 74.6 million pounds were produced in and delivered to pool distributing plants in the same region, indicating a net deficit of 115.2 million pounds. The data does not reflect the amount of milk produced in the southern region that is then pooled and delivered to plants in another order. However, it is reasonable to conclude that if additional milk supplies are produced in, but not delivered to southern region plants, then such milk has found a higher priced alternative outlet.

Record evidence indicates that milk delivered to distributing plants in the southern tier of the marketing area must travel further distances than milk delivered to other plants in the marketing area. The record contains hauling data for the months of January, April, August and November 2007, and January and April 2008. The data reveal that during these six months, milk delivered to plants in the southern region traveled an average of 133 miles from farm to plant. In comparison, the average distance for milk delivered to the Northwest and Northeast regions during that same time period was 72 miles and 70 miles, respectively. Proponents contend that this data demonstrates that the local milk supply in the southern region of the marketing area is not adequate to meet the demand of the local plants.

DFA, *et al.*, utilized two different methodologies to derive their proposed adjustments to Class I prices to compensate for greater transportation costs. These methods demonstrate that that the cost of transporting milk from surplus to deficit regions in the marketing area far exceed the differences in Class I differential levels.

The first methodology uses a transportation model derived from transportation cost data supplied by MEMMA. The data indicate that MEMMA's cost of moving milk within the Mideast marketing area (at the time of the hearing) was $3.23 per loaded mile. Using this cost basis, a per cwt cost of moving milk from 11 predetermined alternative supply points to each of the fluid distributing plants in the marketing area's southern region was established. Record evidence compares how much of the estimated hauling cost is covered by the differences in Class I differential levels between supply points and each of the southern fluid distributing plants (demand points). The average difference for the supply/demand point combinations was $1.76 per cwt, with a range of $0.45 to $3.25 per cwt. This transportation cost model demonstrates that the current differential levels in the southern region of the marketing area fall significantly short of the cost of transporting needed milk to those distributing plants.

The second transportation cost model proponents relied upon was utilized in a recent three market southeastern order hearing that adjusted the Class I prices in those orders (73 FR 11194). Utilizing the same methodology, the model established a fuel adjusted transportation rate of $2.64 per mile, or $0.0055 per cwt per mile. This model compared the acquisition cost (Class I differential of alternative supply area plus transportation cost) of delivering milk from 6 of the 11 potential alternative supply locations to 6 fluid distributing plants in the southern region of the Mideast marketing area. The model then compared the least-cost supply alternative for each distributing plant with the current Class I differential of that plant. For example, the least cost alternative for the Charleston, WV, plant was Wayne County, OH, with an acquisition cost of $2.89 per cwt. The Class I differential at Charleston, WV, is $2.20, suggesting that a Class I price adjustment of $0.69 would be appropriate.

Opponents to the proposed changes claimed that DFA, *et al.*, provided inadequate data to support their claim that changes in the Class I prices for the southeastern orders has made it more costly to supply plants in the southern region of the Mideast marketing area. This criticism is misplaced. As cooperative producer-member organizations that supply the majority of the marketing areas Class I needs, they clearly demonstrated the higher costs associated with supplying plants in the southern region of the marketing area. Almost all opposition witnesses for providing Class I price increases at the hearing agreed that differences in blend prices between orders moves milk. Thus it can be concluded that higher blend prices, through higher Class I prices, attract milk to plants in those orders by providing the economic incentive to supply milk to plants located in the southeastern order marketing areas.

Monthly data recently released by the Appalachian Market Administrator reveals that there has been a significant increase in the amount of producer milk being received from Ohio at plants regulated by the Appalachian order since May 1, 2008, when the Class I prices were increased.[2] The data reveal that producer milk deliveries from Ohio from May through August 2006 averaged 17.7 million pounds per

[2] Official notice is taken of Appalachian Marketing Order Statistics: Producer Milk Pounds by States 2006–2008, found at *http://www.malouisville.com.*

month and 16.5 million pounds per month for the same time period in 2007. From May through August 2008, monthly Ohio producer milk deliveries averaged 44.6 million pounds—an increase of 161 percent from the average of the previous two years. Average monthly deliveries from Ohio from January through August were 21.3 million pounds, 18.2 million pounds and 35.1 million pounds in 2006, 2007 and 2008, respectively. This represents an increase in deliveries from Ohio of 61 percent from 2006 to 2008, and a 92 percent increase from 2007 to 2008.

Recently released data from the Appalachian order supports the proponents' claim that higher Class I prices brought about by providing Class I price adjustments in the southeastern orders have resulted in more milk servicing those orders from farms located in the Mideast marketing area. It is reasonable to conclude from this record evidence, that when coupled with evidence of increased transportation costs, the Class I prices in the southern region of the marketing area provide inadequate incentives to farmers to supply the fluid milk needs of those plants. The recommended adjustments to the Class I prices will provide, under the order, the economic incentives to supply fluid distributing plants located in the southern tier of counties of the Mideast marketing area.

DFA, et al's., proposed Class I price adjustments differ from those calculated in the transportation models. The proposed Class I adjustments as presented align with the differentials in the northern regions of the marketing area, as well as with neighboring marketing areas. These adjustments also ensure that similarly situated Class I handlers in the southern region of the marketing area have similar minimum regulated Class I prices. Providing similar regulated prices for similarly situated handlers is consistent with the requirements of the AMAA.

The proposed Class I price adjustments provide a steeper price surface and reasonable alignment with the current Class I price surface of the marketing areas beyond the geographical boundaries of the Mideast order. 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 the proposed Class I price adjustments change price relationships between plants, the key requirement that similarly located plants have similar regulated minimum prices is maintained.

DFA, *et al.*, analyzed acquisition and distribution costs (Class I differential plus the cost of transportation) of packaged milk in an effort to assure the reasonableness of the level of the proposed Class I price adjustments and determine the effect the proposed adjustments would have on the competitive relationship among handlers in the southern region. The record reflects that the proposed Class I differentials at all locations do not exceed the cost of moving packaged milk to those same locations. From this analysis it is concluded that the proposed Class I adjustments will not encourage uneconomic movements of milk. This method of evaluating the proposed Class I pricing changes in comparison to packaged milk movement forms a rational basis to conclude that the proposed changes to Class I pricing are reasonable.

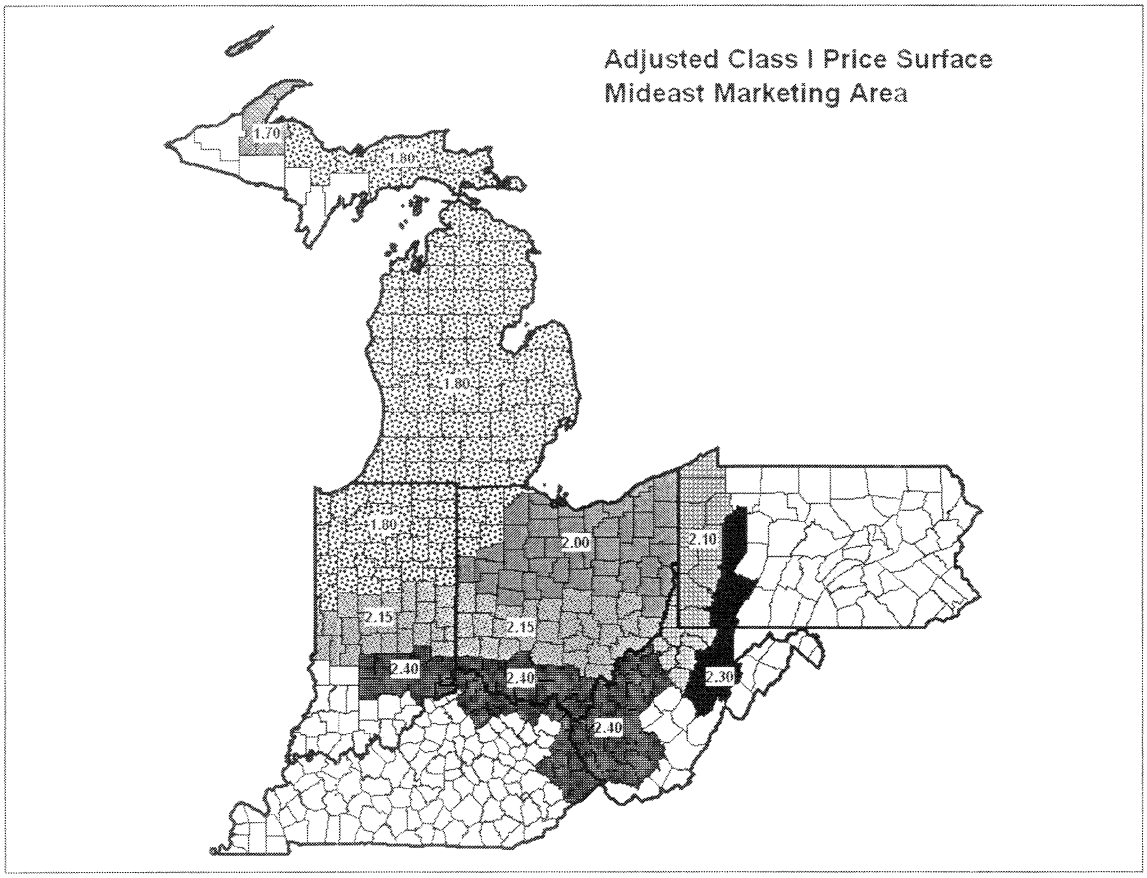
Record evidence cites specific opposition testimony regarding the proposed $0.40 per cwt Class I price adjustment at Charleston, WV. This increase would create a price zone where only one fluid distributing plant operates, the United Dairy plant in Charleston, WV. DFA, *et al.*, claimed that this Class I price adjustment reflects the higher cost of servicing that plant due to its further distance from potential reserve supplies. In its post-hearing brief, DFA, *et al.*, clarifies that the proposed adjustment will align Charleston more properly with the Class I prices of its competitors located and regulated by the Appalachian order. DFA derived the proposed $0.40 Class I price adjustment by taking into account the $0.15 per cwt transportation credit balancing fund assessment that is charged year-round in the Appalachian order on Class I milk.

This decision does not find it appropriate to consider the Appalachian transportation credit balancing fund assessment in determining needed Class I price adjustments in the Mideast marketing area. The transportation credits applicable in the Appalachian order, as asserted by opponents, serve as an economic incentive for needed supplemental milk supplies and should have no bearing on the appropriate adjusted Class I price at Charleston, WV.

The United Dairy witness testified at great length regarding the competitive disadvantage that would be placed on the Charleston, WV, plant when compared to its nearest competitor—the Dean Foods plant in Marietta, OH. The United Dairy plant is currently located in the $2.20 zone, while the Dean Foods plant is located in the $2.00 zone. This means that when competing for sales, the United Dairy plant faces a raw milk cost that is $0.20 per cwt higher. The proposed Class I price adjustment would put the United Dairy plant in a $2.60 price zone (Class I differential plus the Class I price adjustment) and the Dean Foods plant in a $2.15 zone price, increasing the raw milk cost spread to $0.45 per cwt.

This decision finds that a $0.40 increase in the Class I price at Charleston, WV, would unnecessarily change the competitive relationship between the United Dairy plant and its nearest competitors. While the record reflects that the cost of transporting milk to Charleston, WV, is greater than the cost of transportation to other parts of the marketing area, the record does not justify an increase of $0.40 because of the competitive sales relationship with other plants in the southern tier of the marketing area. This decision recommends that the Class I price at Charleston, WV, be increased by $0.20.

The recommended Class I price adjustments are presented in Figure 1. While the Class I differentials in the Mideast marketing area 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.



The proposed Class I price adjustments will not result in the uneconomic movement of milk as asserted by opponents. The proposed Class I pricing surface provides greater pricing incentives under the order to transport needed milk from alternative surplus northern regions to the deficit southern region of the marketing area. The location value of milk is higher in the southern region because of the cost involved in transporting milk to locations in that milk-deficit region. The recommended Class I price adjustments result in a steeper Class I price surface that correlates with the higher location value fluid milk has in the southern region of the marketing area.

Opponents argued that the proposed Class I price adjustments will cause uneconomic movements of milk because milk in the southeastern orders that is not eligible to receive transportation credits will seek to serve plants north and west. As discussed above, it is inappropriate to consider transportation credits in any aspect of adjusting Class I prices.

Opponents to DFA, *et al's.*, Class I price adjustments asserted that there is an adequate supply of milk in the order to meet fluid demands. Record evidence shows that there is an adequate supply of milk in the order as a whole to meet fluid demand. However, in the deficit southern region of the Mideast marketing area, there must be sufficient price incentives provided under the order to encourage the movement of milk from surplus areas to the deficit area. In this regard, the location value of milk needs to account for prevailing marketing conditions which in this proceeding is largely the cost of transportation. The recommended Class I price adjustments should provide the additional incentive needed under the order by offsetting a greater portion of the costs associated with transporting milk longer distances for Class I use.

Opponents also argued that any increase in the Class I prices will be distributed to all producers whose milk is pooled on the Mideast order, and thus there will be no actual incentive to service plants in the deficit southern region. This argument is misplaced. Blend prices paid to producers are adjusted to the location to which milk is delivered. In the Mideast order, the blend price announced each month is for Cuyahoga County, Ohio, which has a current Class I differential of $2.00. Producers whose milk is pooled by plants within the $2.00 zone receive the announced blend price. Producers whose milk is received by plants located outside the $2.00 zone receive the announced blend price adjusted for the location to which delivered. For example, a producer whose milk is received at a plant located in the $2.15 zone will receive the announced blend price plus $0.15. Therefore, producers delivering milk to plants located in the areas where the Class I prices are proposed to be increased will receive more for that milk. Producers supplying plants located outside of the proposed increased zones will see no change to the prices they receive.

At the hearing, Dean Foods proposed that instead of increasing Class I prices in the southern region, Class I differentials should be decreased in the northern regions of the marketing area. Dean argued that this would accomplish the same goal as the proponents—moving milk to deficit plants—without increasing costs to consumers through higher Class I prices.

This decision finds no justification for such an action. The proposed Class I price adjustments represent the location value of Class I milk which is largely reflective of the costs of servicing fluid distributing plants at a particular location. The record of this proceeding did not examine the location value of milk in the northern regions of the marketing area and the record contains no evidence to indicate that the cost of

servicing plants in the northern regions of the marketing area has decreased.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

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

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to Section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for the milk in the marketing area, and the minimum prices specified in the tentative marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, the marketing agreement upon which a hearing has been held.

Recommended Marketing Agreement and Order Amending the Order

The recommended marketing agreement is not included in this decision because the regulatory provisions thereof would be the same as those contained in the order, as hereby proposed to be amended. The following order amending the order, as amended, regulating the handling of milk in the Mideast marketing area is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out.

List of Subjects in 7 CFR Parts 1000 and 1033

Milk marketing orders.

For the reasons set forth in the preamble, 7 CFR Parts 1000 and 1033, are proposed to be amended as follows:

1. The authority citation for 7 CFR parts 1000 and 1033 continues to read as follows:

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

PART 1000—GENERAL PROVISIONS OF FEDERAL MILK MARKETING ORDERS

2. In § 1000.50 paragraphs (b) and (c) are revised 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), § 1007.51(b) and § 1033.51 (b) plus the higher of the advanced pricing factors computed in paragraphs (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), § 1007.51(b) and § 1033.51 (b) divided by 100, plus the advanced butterfat price computed in paragraph (q) (3) of this section.

* * * * *

PARTS 1033—MILK IN THE MIDEAST MARKETING AREA

3. Revise § 1033.51 to read as follows:

§ 1033.51 Class I differential, adjustments to Class I prices, and Class I price.

(a) The Class I differential shall be the differential established for Cuyahoga County, Ohio, which is reported in § 1000.52. The Class I price shall be the price computed pursuant to § 1033.50 (a) for Cuyahoga County Ohio.

(b) Adjustments 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
IN	ADAMS	18001	0.00
IN	ALLEN	18003	0.00
IN	BARTHOLOMEW	18005	0.20
IN	BENTON	18007	0.00
IN	BLACKFORD	18009	0.00
IN	BOONE	18011	0.15
IN	BROWN	18013	0.20
IN	CARROLL	18015	0.00
IN	CASS	18017	0.00
IN	CLAY	18021	0.15
IN	CLINTON	18023	0.00
IN	DE KALB	18033	0.00
IN	DEARBORN	18029	0.20
IN	DECATUR	18031	0.20
IN	DELAWARE	18035	0.15
IN	ELKHART	18039	0.00
IN	FAYETTE	18041	0.15
IN	FOUNTAIN	18045	0.00
IN	FRANKLIN	18047	0.15
IN	FULTON	18049	0.00
IN	GRANT	18053	0.00
IN	HAMILTON	18057	0.15

State	County/parish	FIPS	Class I price adjustment
IN	HANCOCK	18059	0.15
IN	HENDRICKS	18063	0.15
IN	HENRY	18065	0.15
IN	HOWARD	18067	0.00
IN	HUNTINGTON	18069	0.00
IN	JACKSON	18071	0.20
IN	JASPER	18073	0.00
IN	JAY	18075	0.00
IN	JEFFERSON	18077	0.20
IN	JENNINGS	18079	0.20
IN	JOHNSON	18081	0.15
IN	KOSCIUSKO	18085	0.00
IN	LA PORTE	18091	0.00
IN	LAGRANGE	18087	0.00
IN	LAKE	18089	0.00
IN	LAWRENCE	18093	0.20
IN	MADISON	18095	0.15
IN	MARION	18097	0.15
IN	MARSHALL	18099	0.00
IN	MIAMI	18103	0.00
IN	MONROE	18105	0.20
IN	MONTGOMERY	18107	0.15
IN	MORGAN	18109	0.15
IN	NEWTON	18111	0.00
IN	NOBLE	18113	0.00
IN	OHIO	18115	0.20
IN	OWEN	18119	0.15
IN	PARKE	18121	0.15
IN	PORTER	18127	0.00
IN	PULASKI	18131	0.00
IN	PUTNAM	18133	0.15
IN	RANDOLPH	18135	0.15
IN	RIPLEY	18137	0.20
IN	RUSH	18139	0.15
IN	SHELBY	18145	0.15
IN	ST. JOSEPH	18141	0.00
IN	STARKE	18149	0.00
IN	STEUBEN	18151	0.00
IN	SWITZERLAND	18155	0.20
IN	TIPPECANOE	18157	0.00
IN	TIPTON	18159	0.00
IN	UNION	18161	0.15
IN	VERMILLION	18165	0.15
IN	VIGO	18167	0.15
IN	WABASH	18169	0.00
IN	WARREN	18171	0.00
IN	WAYNE	18177	0.15
IN	WELLS	18179	0.00
IN	WHITE	18181	0.00
IN	WHITLEY	18183	0.00
KY	BOONE	21015	0.20
KY	BOYD	21019	0.20
KY	BRACKEN	21023	0.20
KY	CAMPBELL	21037	0.20
KY	FLOYD	21071	0.20
KY	GRANT	21081	0.20
KY	GREENUP	21089	0.20
KY	HARRISON	21097	0.20
KY	JOHNSON	21115	0.20
KY	KENTON	21117	0.20
KY	LAWRENCE	21127	0.20
KY	LEWIS	21135	0.20
KY	MAGOFFIN	21153	0.20
KY	MARTIN	21159	0.20
KY	MASON	21161	0.20
KY	PENDLETON	21191	0.20
KY	PIKE	21195	0.00
KY	ROBERTSON	21201	0.20
MI	ALCONA	26001	0.00
MI	ALGER	26003	0.00
MI	ALLEGAN	26005	0.00
MI	ALPENA	26007	0.00
MI	ANTRIM	26009	0.00

State	County/parish	FIPS	Class I price adjustment
MI	ARENAC	26011	0.00
MI	BARAGA	26013	0.00
MI	BARRY	26015	0.00
MI	BAY	26017	0.00
MI	BENZIE	26019	0.00
MI	BERRIEN	26021	0.00
MI	BRANCH	26023	0.00
MI	CALHOUN	26025	0.00
MI	CASS	26027	0.00
MI	CHARLEVOIX	26029	0.00
MI	CHEBOYGAN	26031	0.00
MI	CHIPPEWA	26033	0.00
MI	CLARE	26035	0.00
MI	CLINTON	26037	0.00
MI	CRAWFORD	26039	0.00
MI	EATON	26045	0.00
MI	EMMET	26047	0.00
MI	GENESEE	26049	0.00
MI	GLADWIN	26051	0.00
MI	GRAND TRAVERSE	26055	0.00
MI	GRATIOT	26057	0.00
MI	HILLSDALE	26059	0.00
MI	HOUGHTON	26061	0.00
MI	HURON	26063	0.00
MI	INGHAM	26065	0.00
MI	IONIA	26067	0.00
MI	IOSCO	26069	0.00
MI	ISABELLA	26073	0.00
MI	JACKSON	26075	0.00
MI	KALAMAZOO	26077	0.00
MI	KALKASKA	26079	0.00
MI	KENT	26081	0.00
MI	KEWEENAW	26083	0.00
MI	LAKE	26085	0.00
MI	LAPEER	26087	0.00
MI	LEELANAU	26089	0.00
MI	LENAWEE	26091	0.00
MI	LIVINGSTON	26093	0.00
MI	LUCE	26095	0.00
MI	MACKINAC	26097	0.00
MI	MACOMB	26099	0.00
MI	MANISTEE	26101	0.00
MI	MARQUETTE	26103	0.00
MI	MASON	26105	0.00
MI	MECOSTA	26107	0.00
MI	MIDLAND	26111	0.00
MI	MISSAUKEE	26113	0.00
MI	MONROE	26115	0.00
MI	MONTCALM	26117	0.00
MI	MONTMORENCY	26119	0.00
MI	MUSKEGON	26121	0.00
MI	NEWAYGO	26123	0.00
MI	OAKLAND	26125	0.00
MI	OCEANA	26127	0.00
MI	OGEMAW	26129	0.00
MI	OSCEOLA	26133	0.00
MI	OSCODA	26135	0.00
MI	OTSEGO	26137	0.00
MI	OTTAWA	26139	0.00
MI	PRESQUE ISLE	26141	0.00
MI	ROSCOMMON	26143	0.00
MI	SAGINAW	26145	0.00
MI	SANILAC	26151	0.00
MI	SCHOOLCRAFT	26153	0.00
MI	SHIAWASSEE	26155	0.00
MI	ST. CLAIR	26147	0.00
MI	ST. JOSEPH	26149	0.00
MI	TUSCOLA	26157	0.00
MI	VAN BUREN	26159	0.00
MI	WASHTENAW	26161	0.00
MI	WAYNE	26163	0.00
MI	WEXFORD	26165	0.00
OH	ADAMS	39001	0.20

State	County/parish	FIPS	Class I price adjustment
OH	ALLEN	39003	0.00
OH	ASHLAND	39005	0.00
OH	ASHTABULA	39007	0.00
OH	ATHENS	39009	0.15
OH	AUGLAIZE	39011	0.00
OH	BELMONT	39013	0.00
OH	BROWN	39015	0.20
OH	BUTLER	39017	0.15
OH	CARROLL	39019	0.00
OH	CHAMPAIGN	39021	0.00
OH	CLARK	39023	0.15
OH	CLERMONT	39025	0.20
OH	CLINTON	39027	0.15
OH	COLUMBIANA	39029	0.00
OH	COSHOCTON	39031	0.00
OH	CRAWFORD	39033	0.00
OH	CUYAHOGA	39035	0.00
OH	DARKE	39037	0.15
OH	DEFIANCE	39039	0.00
OH	DELAWARE	39041	0.00
OH	FAIRFIELD	39045	0.15
OH	FAYETTE	39047	0.15
OH	FRANKLIN	39049	0.15
OH	FULTON	39051	0.00
OH	GALLIA	39053	0.20
OH	GEAUGA	39055	0.00
OH	GREENE	39057	0.15
OH	GUERNSEY	39059	0.15
OH	HAMILTON	39061	0.20
OH	HANCOCK	39063	0.00
OH	HARDIN	39065	0.00
OH	HARRISON	39067	0.00
OH	HENRY	39069	0.00
OH	HIGHLAND	39071	0.20
OH	HOCKING	39073	0.15
OH	HOLMES	39075	0.00
OH	JACKSON	39079	0.20
OH	JEFFERSON	39081	0.00
OH	KNOX	39083	0.00
OH	LAKE	39085	0.00
OH	LAWRENCE	39087	0.20
OH	LICKING	39089	0.15
OH	LOGAN	39091	0.00
OH	LORAIN	39093	0.00
OH	LUCAS	39095	0.00
OH	MADISON	39097	0.15
OH	MAHONING	39099	0.00
OH	MARION	39101	0.00
OH	MEDINA	39103	0.00
OH	MEIGS	39105	0.15
OH	MERCER	39107	0.00
OH	MIAMI	39109	0.15
OH	MONROE	39111	0.15
OH	MONTGOMERY	39113	0.15
OH	MORGAN	39115	0.15
OH	MORROW	39117	0.00
OH	MUSKINGUM	39119	0.15
OH	NOBLE	39121	0.15
OH	PAULDING	39125	0.00
OH	PERRY	39127	0.15
OH	PICKAWAY	39129	0.15
OH	PIKE	39131	0.20
OH	PORTAGE	39133	0.00
OH	PREBLE	39135	0.15
OH	PUTNAM	39137	0.00
OH	RICHLAND	39139	0.00
OH	ROSS	39141	0.15
OH	SANDUSKY	39143	0.00
OH	SCIOTO	39145	0.20
OH	SENECA	39147	0.00
OH	SHELBY	39149	0.00
OH	STARK	39151	0.00
OH	SUMMIT	39153	0.00

State	County/parish	FIPS	Class I price adjustment
OH	TRUMBULL	39155	0.00
OH	TUSCARAWAS	39157	0.00
OH	UNION	39159	0.00
OH	VAN WERT	39161	0.00
OH	VINTON	39163	0.15
OH	WARREN	39165	0.15
OH	WASHINGTON	39167	0.15
OH	WAYNE	39169	0.00
OH	WILLIAMS	39171	0.00
OH	WOOD	39173	0.00
OH	WYANDOT	39175	0.00
PA	ALLEGHENY	42003	0.00
PA	ARMSTRONG	42005	0.00
PA	BEAVER	42007	0.00
PA	BUTLER	42019	0.00
PA	CLARION	42031	0.00
PA	CRAWFORD	42039	0.00
PA	ERIE	42049	0.00
PA	FAYETTE	42051	0.00
PA	GREENE	42059	0.00
PA	LAWRENCE	42073	0.00
PA	MERCER	42085	0.00
PA	VENANGO	42121	0.00
PA	WASHINGTON	42125	0.00
PA	WESTMORELAND	42129	0.00
WV	BARBOUR	54001	0.00
WV	BOONE	54005	0.20
WV	BROOKE	54009	0.00
WV	CABELL	54011	0.20
WV	CALHOUN	54013	0.20
WV	DODDRIDGE	54017	0.00
WV	FAYETTE	54019	0.20
WV	GILMER	54021	0.20
WV	HANCOCK	54029	0.00
WV	HARRISON	54033	0.00
WV	JACKSON	54035	0.20
WV	KANAWHA	54039	0.20
WV	LEWIS	54041	0.00
WV	LINCOLN	54043	0.20
WV	LOGAN	54045	0.20
WV	MARION	54049	0.00
WV	MARSHALL	54051	0.00
WV	MASON	54053	0.20
WV	MINGO	54059	0.20
WV	MONONGALIA	54061	0.00
WV	OHIO	54069	0.00
WV	PLEASANTS	54073	0.20
WV	PRESTON	54077	0.00
WV	PUTNAM	54079	0.20
WV	RALEIGH	54081	0.20
WV	RANDOLPH	54083	0.00
WV	RITCHIE	54085	0.20
WV	ROANE	54087	0.20
WV	TAYLOR	54091	0.00
WV	TUCKER	54093	0.00
WV	TYLER	54095	0.00
WV	UPSHUR	54097	0.00
WV	WAYNE	54099	0.20
WV	WETZEL	54103	0.00
WV	WIRT	54105	0.20
WV	WOOD	54107	0.20
WV	WYOMING	54109	0.20

Dated: January 8, 2009.

James E. Link,

Administrator, Agricultural Marketing Service.

[FR Doc. E9–607 Filed 1–13–09; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF ENERGY

10 CFR Part 431

[Docket No. EERE–2008–BT–STD–0015]

RIN 1904–AB86

Energy Efficiency Program for Consumer Products: Public Meeting and Availability of the Framework Document for Walk-In Coolers and Walk-In Freezers; Date Change; Correction

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Proposed rule; date change; correction.

SUMMARY: The Department of Energy published a notice in the **Federal Register** on January 6, 2009, of a public meeting and availability of the framework document regarding energy conservation standards for walk-in coolers and walk-in freezers. This notice corrects the date of the public meeting, the date of the deadline for requesting to speak at the public meeting, and the date of the deadline for submitting written comments on the framework document.

FOR FURTHER INFORMATION CONTACT: Charles Llenza, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–2192. e-mail: *Charles.Llenza@ee.doe.gov.*

Michael Kido, U.S. Department of Energy, Office of the General Counsel, GC–72, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–8145. e-mail: *Michael.Kido@hq.doe.gov.*

Date Change/Corrections

In the **Federal Register** of January 6, 2009, FR Doc. E8–31405, on page 411, the following correction is made to the **DATES** section:

DATES: The Department will hold a public meeting on Wednesday, February 4, 2009, from 9 a.m. to 4 p.m. in Washington, DC. Any person requesting to speak at the public meeting should submit such request along with a signed original and an electronic copy of the statement to be given at the public meeting before 4 p.m., Wednesday, January 28, 2009. Written comments on the framework document are welcome, especially following the public meeting, and should be submitted by Thursday, February 12, 2009.

SUPPLEMENTARY INFORMATION: As noted above, DOE will hold a public meeting on Wednesday, February 4, 2009, in Washington, DC, the purpose of the meeting is to discuss the analyses presented and issues identified in the Framework Document. For additional information regarding the document and the meeting, the agency refers readers to the prior January 6, 2009 notice. 74 FR 411.

The Department welcomes all interested parties, whether or not they participate in the public meeting, to submit written comments regarding matters addressed in the Framework Document, as well as any other related issues by February 12, 2009.

Issued in Washington, DC, on January 8, 2009.

David E. Rodgers,

Deputy Assistant Secretary for Energy Efficiency, Office of Technology Development, Energy Efficiency and Renewable Energy.

[FR Doc. E9–591 Filed 1–13–09; 8:45 am]

BILLING CODE 6450–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 120

RIN 3245–AF83

Business Loan Program Regulations: Incorporation of London Interbank Offered Rate (LIBOR) Base Rate and Secondary Market Pool Interest Rate Changes

AGENCY: U.S. Small Business Administration (SBA).

ACTION: Interim Final Rule, notice of reopening of comment period.

SUMMARY: SBA is reopening the comment period for an additional 90 days.

DATES: Comments on the interim final rule on Business Loan Program Regulations: Incorporation of London Interbank Offered Rate (LIBOR) Base Rate and Secondary Market Pool Interest Rate Changes, must be received on or before April 14, 2009.

ADDRESSES: You may submit comments, identified by 3245–AF83, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail, Hand Delivery/Courier:* Grady Hedgespeth, Director, Office of Financial Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Washington, DC 20416.

All comments will be posted on *http://www.regulations.gov.* If you wish to include within your comment confidential business information (CBI) as defined in the Privacy and Use Notice/User Notice at *http://www.regulations.gov,* and you do not want that information disclosed, you must submit the comments by either Mail or Hand Delivery and you must address the comment to Grady Hedgespeth, Director, Office of Financial Assistance. In the submission, you must highlight the information that you consider to be CBI and explain why you believe this information should be held confidential. SBA will make a final determination, in its discretion, of whether information is CBI and, therefore, the comments will not be published.

FOR FURTHER INFORMATION CONTACT: Grady Hedgespeth, Director, Office of Financial Assistance, 202–205–7562, or *grady.hedgespeth@sba.gov.*

SUPPLEMENTARY INFORMATION: On November 13, 2008, SBA published in the **Federal Register** an interim final rule permanently adding a base rate of LIBOR for lenders to use when pricing 7(a) loans and allowing for secondary market loan pools to be formed with weighted average coupon rates. (73 FR 67099). This rule was added to help ensure continued availability of capital to small businesses and to improve liquidity in and efficiency of the secondary market for SBA loans. The original comment period ended on December 15, 2008. SBA is reopening the comment period for a limited time until April 14, 2009 in order to solicit additional comments as our lending partners and secondary market participants continue to implement the two changes allowed in the interim final rule. Some SBA partners are still updating their systems to incorporate LIBOR based loans. SBA's recently published Procedural Notice No. 5000–1081: One Month LIBOR Plus 3 Percent Allowed as SBA Base Rate (Nov. 14, 2008) and SBA Information Notice: Implementation of SBA's Addition of LIBOR Plus 3 Percent as a Base Rate (Nov. 20, 2008), both of which can be found at *http://www.sba.gov.* Additionally, procedures for weighted average coupon pools were recently released by SBA. SBA Procedural Notice