

## UNITED STATES DEPARTMENT OF AGRICULTURE

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 In the Matter of: \*  
 \* Docket Nos.  
 MILK ORDER AMENDMENT HEARING \* AO-313-A44  
 \*\*\*\*\* DA-01-07

Thursday,  
 November 15, 2001

Hilton Hotel  
 Wyandotte Room  
 8801 N.W. 112<sup>th</sup> Street  
 Kansas City, MO

The above-entitled matter came on for  
 hearing, pursuant to notice at 8:00 a.m.

BEFORE: JUDGE DOROTHEA BAKER

On behalf of the Proponents:

MARVIN BESHORE, Esquire  
 Milspew & Beshore Law Offices  
 130 State Street  
 P. O. Box 946  
 Harrisburg, PA 17108

CHARLES M. ENGLISH, JR., Esquire  
 Thelen Reid and Priest, LLP  
 701 Pennsylvania Ave., N.W. Suite 800  
 Washington, D.C. 20004

JOHN VETNE, Esquire  
 15 Powow  
 Amesburg, MA

## ALSO PRESENT:

DENNIS TONAK  
Midwest Dairymen's Company  
4313 West State Street  
Rockford, IL 61102

J. BRADLEY OLSEN, Esquire  
Vice President and General Counsel  
Leprino Foods  
1830 West 38<sup>th</sup> Avenue  
Denver, CO 80211

On behalf of USDA:

GREGORY COOPER, Esquire  
U.S. Department of Agriculture  
Office of General Counsel  
Marketing Division  
Washington, D.C. 20250

## ALSO PRESENT:

CONSTANCE BRENNER  
CAROL WARLICK  
GINO TOSI

## I N D E X

<u>WITNESSES:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Chas Stukenberg	363	364 365		
Wm Siebenbor	367	374 391 404 405 406	378 409	
Curtis Kurth	411	421 446 450 451	454	
Gary Gran	460	465 469 469		
Dennis Tonak	471	479 480		
Neil Gulden	488	492		
Bill Dropik	506	511		
James Hahn	515	523		
Tim Mueller	531			
Neil Gulden	539	544		
Carl Conover	548	560		
Jim Hahn	561			
Elvin Hollon	564	575 576		
Duane Banderob	579	595 598		
Gary Lee	601			
Elvin Hollon	602	607		

## I N D E X

## E X H I B I T S

<u>NUMBER:</u>	<u>IDENTIFIED</u>	<u>RECEIVED</u>
Exhibit 17	419	461
Exhibit 18	420	461
Exhibit 19	474	488
Exhibit 20	477	488
Exhibit 21	536	537
Exhibit 22	539	539
Exhibit 23	540	546
Exhibit 24	579	580
Exhibit 25	565	580
Exhibit 26	581	595

1 M O R N I N G S E S S I O N

2 (8:05 a.m.)

3 JUDGE BAKER: Good morning, everyone. Good  
4 to see everyone here. I want to thank everybody for  
5 their participation yesterday. We made considerable  
6 headway and I do want to thank you for your cooperation  
7 in these proceedings, particularly Mr. English and Mr.  
8 Beshore in accommodating witnesses that had to be taken  
9 out of turn.

10 This is the second day of our hearing  
11 relating to Milk and the Central Marketing Area. And  
12 we are now ready to proceed.

13 Mr. Beshore, Mr. Cooper.

14 MR. COOPER: Yes, Mr. Stukenberg was asked to  
15 bring certain data that, yesterday and he is prepared  
16 now and I understand the Parties would like to have  
17 that first.

18 JUDGE BAKER: Oh, very well. Would he take  
19 the stand, he is already --

20 MR. COOPER: So, Mr. Stukenberg could return  
21 to the stand.

22 JUDGE BAKER: You have already been sworn, Mr.  
23 Stukenberg.

24 Whereupon,

25 DAVID STUKENBERG

1 having been previously duly sworn, was recalled as a  
2 witness herein and was examined and further testified  
3 as follows:

4 FURTHER DIRECT EXAMINATION

5 BY MR. COOPER:

6 Q Mr. Stukenberg, could you please supply the  
7 data that you were asked to bring yesterday?

8 A Yes, sir.

9 This relates to Exhibit number 7, information  
10 prepared for Elvin Hollon. And on the Table BFA,  
11 number two, the question had come up whether for the  
12 months of December 1998 and December 2000, whether  
13 milk, not pooled, was included in the data set. And  
14 based on our information contained in the office and so  
15 forth, and we reviewed it, it does contain milk not  
16 pooled.

17 Q And for which months is this?

18 A This is for December 1998 and December 2000  
19 and I can't say for sure about December of '96. We  
20 didn't go back and check that one.

21 MR. COOPER: Okay. No further questions.

22 JUDGE BAKER: Does anyone have any questions?

23 Yes, Mr. Beshore.

24 CROSS EXAMINATION

25 BY MR. BESHORE:

1           Q     Just for clarification to make sure the  
2     record is clear about this, Mr. Stukenberg. When you  
3     say the information with respect to December 1998 and  
4     December 2000 contains milk not pooled, in compiling  
5     that information, does your office basically assemble  
6     milk, or report information with respect to milk that  
7     has customarily been pooled, was pooled the prior  
8     months and things of that nature, but may not be pooled  
9     this particular month because of a price relationship,  
10    and report that as milk that is essentially milk  
11    involved with the order?

12           A     That is correct. And it is based on the  
13    payroll information provided by the responsible persons  
14    paying the producers.

15                   MR. BESHORE: Okay. That is all I have.

16                   JUDGE BAKER: Thank you. Are there any other  
17    questions? Apparently there are none.

18                   MR. BESHORE: Oh, I did forget. There is one  
19    other question I wanted to ask by way of clarification  
20    with respect to the order, order operations and not  
21    specifically with respect to this exhibit.

22                   BY MR. BESHORE:

23           Q     I posed the question to Mr. Hollon, as I  
24    recall, with respect to whether during the so called  
25    free ride period for supply plants, in Order 32, there

1 is any limitation on the amount of milk that may be  
2 associated with that supply plant? Any limitation  
3 imposed by the order with respect to the amount of milk  
4 that may be pooled on the order and associated with  
5 that supply plant?

6 A There is no limitation so long as the  
7 producers have been associated with the market.

8 Q Okay. So, if the producers had their one day  
9 delivery, whenever it was, and the supply plant had  
10 qualified during the performance months, during the so  
11 called free ride months, that supply plant can  
12 associate an unlimited amount of milk consistent with  
13 the order, regulations.

14 A That is correct.

15 Q And report them to the order.

16 A That is correct.

17 MR. BESHORE: Thank you.

18 JUDGE BAKER: Thank you. Mr. Vetne.

19 MR. VETNE: Yes.

20 CROSS EXAMINATION

21 BY MR. VETNE:

22 Q Mr. Stukenberg, I am John Vetne.

23 On the exhibit with respect to December, what  
24 was it, 1996 and 1998, it includes milk that was not  
25 pooled, that would ordinarily have been pooled.

1           A     If the price relationships would have been  
2     correct, or within normal alignment, the milk would  
3     have been pooled.

4           Q     You made some judgement as to what would have  
5     been pooled and what counties milk would have been  
6     pooled in?

7           A     Well, the judgement came through, the  
8     historical association with these producers on the  
9     marketed months past.

10          Q     Okay. And let me just ask one more question,  
11     following Mr. Beshore's lead to go beyond that.

12                     During the time since the Federal Order of  
13     Reform decision came into effect, has your office had  
14     occasion to publish any, any notice in respond to our  
15     request for an upward adjustment of performance  
16     requirements to supply to distributing plants?

17          A     An upward adjustment, meaning in --

18          Q     Meaning --

19          A     Increasing the percentages?

20          Q     Increasing percentages. Has any, has any  
21     requests like that been published to get more milk to  
22     distributing plants during the past almost two years?

23          A     Yes, there was.

24          Q     It has been published.

25          A     Yes.

1 Q And what was the result?

2 A It was denied.

3 MR. VETNE: Okay. Thank you.

4 JUDGE BAKER: Thank you, Mr. Vetne. Are there  
5 any other questions? There appear to be none. Thank  
6 you very much, Mr. Stukenberg.

7 (Whereupon, the witness was excused.)

8 MR. BESHORE: All right, at this time, Your  
9 Honor, we would like to call William Siebenbor.

10 JUDGE BAKER: Very well, Mr. Siebenbor.

11 (Pause.)

12 Whereupon,

13 WILLIAM SIEBENBOR

14 having been first duly sworn, was called as a witness  
15 herein and was examined and testified as follows:

16 DIRECT EXAMINATION

17 BY MR. BESHORE:

18 Q Would you state your name and spell your last  
19 name for the record?

20 A Bill Siebenbor. S-I-E-B-E-N-B-O-R.

21 Q Okay. What is your address?

22 A 661 Northeast 45<sup>th</sup> Street, Trenton, Missouri.

23 Q What part of the state Trenton located in?

24 A North Central part.

25 Q What do you do for a living?

1           A     Dairy farmer.

2           Q     How long have you been a dairy farmer?

3           A     Twenty four years.

4           Q     Okay. Tell us just a little bit about your  
5 farm.

6           A     We have a 90 cow intensive raising operation.  
7 We are located about 100 miles from here, Kansas City.  
8 We started intensive raising about 10 years ago. We  
9 raise all of our own replacements, raise our own corn,  
10 buy our hay.

11          Q     Okay.

12          A     My wife teaches English, the kids are gone.

13          Q     -- keep you busy.

14          A     Yes, yes.

15          Q     Are you member of DFA?

16          A     Yes.

17          Q     Do you hold any capacities within DFA as a  
18 producer representative?

19          A     I do. I am elected from our local district  
20 that includes the north part of Kansas City, about a 12  
21 county area. I also am chairman of the Central Area  
22 Council and vice chairman of the Cooperate Board, one  
23 of three vice chairmans.

24          Q     The DFA Cooperate Board?

25          A     Yes.

1           Q     Okay.  Now, what is the Central Area Council  
2 of which you are the chairman?

3           A     I believe it is 11 states or parts of 11  
4 states.  It is Wisconsin, Minnesota, North Dakota,  
5 South Dakota, Iowa, Illinois, the northern half of  
6 Missouri and Nebraska, Kansas, and the western portion  
7 of Oklahoma.

8           Q     How many members are on the Central Area  
9 Council or how is it composed?  What is the --

10          A     We have about 5500 dairy farmer members.

11          Q     Okay.  And the Council, itself, is elected  
12 representatives of those 5500 dairy farmers members, is  
13 that correct?

14          A     Yes, just like I am.  We are divided up into  
15 48 districts and each district has an elected  
16 representative to one of three region boards within the  
17 Area Council.

18          Q     Okay.  Now, has the, does the  
19 responsibilities of the Central Council include  
20 overseeing, monitoring that DFA's marketing of milk in  
21 that region?

22          A     Yes.

23          Q     Can you tell us, Mr. Siebenbor, how the pool  
24 of milk, how the operations of Order 32, since January  
25 1, 2000, have been, what the experience has been in

1 the Central Council in terms of how Order 32 has  
2 operated since January 1 of 2000?

3 A Well, in our, in this Kansas City area, our,  
4 our Class I utilization has dropped from what ran  
5 normally in the mid-40s into the upper 20s. What used  
6 to be about a 45 percent Class I utilization is now 27  
7 percent, 28 percent. It is has been particularly  
8 difficult in our area council because of we border  
9 Federal Order 7, in a lot of areas, in Illinois,  
10 Missouri, Kansas, Oklahoma. And we have producers,  
11 Central Area Council producers three miles down the  
12 road from the Southeast Area Council producer and wide  
13 price discrepancies in mailbox paid prices.

14 Q How wide?

15 A Two dollars, \$2.50. And Central Area Council  
16 producers are disillusioned with the co-op at times,  
17 the Federal Order system because of this. I think we  
18 have cases where the two producers go on the same milk  
19 truck. But, but they find these wide price  
20 discrepancies and it is disheartening and naturally to  
21 see that happen.

22 Q By those, did you anticipate those types of  
23 price discrepancies as the orders were consolidated  
24 after January 1, 2000?

25 A No, as dairy farmers, we did not. We, I

1 really don't know what we expected. We have very  
2 little input into that, as you know, but, but, the  
3 consolidation of the orders seem to be following the  
4 trend of the industry and the numbers of farmers are  
5 declining and consolidating as our buyers of milk. And  
6 it seemed like a reasonable action for the Department  
7 to take. We just did not expect to see these types of  
8 discrepancies.

9 Q Do you see the same kinds of discrepancies in  
10 paid prices in the northern part of Central Kansas?

11 A We do not. We do have discrepancies,  
12 naturally because milk is priced according to markets,  
13 and there are discrepancies, but for a variety of  
14 reasons, and I don't know all of them, I mean, some of  
15 them are cheese premiums, some are competitive issues  
16 in the upper Midwest. But, mailbox milk prices seem to  
17 be much closer in the Central Area Council in the  
18 north, than in the south.

19 Q Is the Central Area Council, which includes  
20 the 11 state region that you have described, supportive  
21 of the requested changes in Order 32 that are being  
22 advanced by DFA and others here in this area?

23 A Yes, we are.

24 Q Okay. Let me ask you just a bit about  
25 Proposal VI, which hasn't been testified to at length

1 yet. That relates to the advanced price, so called  
2 advanced price payment under the order.

3 Have you noticed since January of 2000, any  
4 change in the, first of all the check you got for milk  
5 at local deliveries in a given month?

6 A Yes, we have. The advanced paid price is  
7 lower. I am not sure how much, but, you know, 10  
8 percent or some, enough that you noticed that when you  
9 sit down to pay the bills twice a month, why that  
10 particular check is lower than it used to be.

11 Q Okay. Has that made a difference in your  
12 personal, your personal --

13 A Dairy farmers are very dependent upon this  
14 twice monthly payment, and personally we structure  
15 virtually all of our farm payments on a monthly basis  
16 because our income is monthly as opposed to crop  
17 farmers or somebody that sells calves twice a year.  
18 And any time one of those checks is lower, then it  
19 impacts us in a negative.

20 Q Are you supportive of the request that change  
21 in the rate of payment required for that advanced  
22 price, as proposed in Proposal VI?

23 A Yes, I am.

24 Q Okay. And the Council is supportive of that?

25 A Yes.

1 Q Okay.

2 (Pause.)

3 BY MR. BESHORE:

4 Q As a director, as chairman of the Central  
5 Council, I take it, Mr. Siebenbor, that you are, you  
6 are briefed from time to time about the federal order  
7 issues and federal order operations, but do you  
8 consider yourself an expert on how the rules are set?

9 A No.

10 Q Or the technicalities that --

11 A No.

12 Q Would it be fair to say that, that, you know,  
13 as chairman of the Central Council and as a dairy  
14 farmer in this region, what you have noticed and what  
15 you are concerned about is that the utilization on the  
16 order has gone down dramatically your price has gone  
17 down dramatically and it has created marketing  
18 difficulties within the Central Council because of the  
19 discrepancies with other, nearby area paid prices?

20 A Absolutely.

21 MR. BESHORE: Okay. Thank you.

22 JUDGE BAKER: Thank you, Mr. Beshore.

23 Are there any other questions? Are there any  
24 questions? Yes, Mr. Vetne?

25 CROSS EXAMINATION

1 BY MR. VETNE:

2 Q Good morning.

3 A Good morning.

4 Q I am John Vetne. I am attorney for a group  
5 of six upper Midwest area dairy co-ops.

6 You gave an illustration of two producers  
7 with milk on the same truck, having different prices.  
8 I just want to make sure that I understand, even though  
9 everybody else might. I am not sure I do. Were you  
10 referring to two DFA producers, first of all?

11 A Yes.

12 Q And two, that would be two DFA producers,  
13 well, producing milk in largely the same neighborhood.

14 A Yes.

15 Q Whose milk was going to the same plant?

16 A Yes.

17 Q Manufacturing plant or --

18 A Probably not. In this area I was referring  
19 to, it is virtually all fluid.

20 Q Okay. But, the two producers would have  
21 their milk priced on two different, under two different  
22 formulas?

23 A Yes, one being a Central Area Council member,  
24 the other being a Southeast Area Council member.

25 Q Okay.

1           A     And both area councils utilizing those blend  
2 prices to pay their producers.

3           Q     Okay. So, if DFA member milk is shifted in  
4 its marketing, say a producer is taken and associated  
5 with somebody in the southeast, that producer becomes a  
6 member of a different council?

7           A     No.

8           Q     The milk is priced by a different council?

9           A     Well, let's see. No, the, I don't believe it  
10 is priced by a different council. It is priced by the  
11 Central Area Council, but with that blend price  
12 utilization in that order that is in Federal Order 7,  
13 that we are speaking of. But, it would continue to be  
14 priced by Central Area Council.

15          Q     Okay. The milk going to Order, from the farm  
16 going to Order 7, as far as what the producer receives  
17 would be priced by the Central Area Council.

18          A     That is correct.

19          Q     Okay. And the, if I understand correctly,  
20 the decision to associate that milk with Order 7 is a  
21 decision not made by the producer but by DFA.

22          A     That is correct.

23          Q     And that would be a Council decision?

24          A     That would be a management decision.

25          Q     Are you distinguishing from council --

1 A Yes.

2 Q It is not regional, it is national  
3 management?

4 A No. Area, it is regional management.

5 Q Regional management.

6 A Area council management.

7 Q Area council management from the states that  
8 you listed earlier in response to Mr. Beshore.

9 A Yes.

10 Q That area. Okay.

11 And so it would be management that decides in  
12 the distribution of money, the revenue to DFA, that the  
13 producer, whose milk is going to Order 7, the marketing  
14 of which, over which that producer had no control, that  
15 producer gets more money in his milk check than the  
16 producer going to Order 32?

17 A That is correct.

18 Q Okay.

19 A That is correct.

20 Q Does, does a similar scenario occur to a  
21 lesser degree in the northern tier of Order 32, where  
22 32 meets with the upper Midwest?

23 A Yes.

24 Q And would there be similar marketings in  
25 which there might be two producers whose milk is in the

1 same truck, who farm in the same county, who might be  
2 neighbors, and they receive different blend prices?

3 A Well, they would both in that scenario, they  
4 would both be Central Area Council members.

5 Q Yes.

6 A That being the difference. The scenario I  
7 described, one producer would be a Southeast Area  
8 Council member, the other producer a Central Area  
9 Council member. In the case you are describing, that  
10 would all be Central Area Council.

11 Q Oh. And if the producers are all Central  
12 Area Council members does that mean that they don't get  
13 a different price?

14 A No, they would get, well, they would, their  
15 milk would be priced according to the markets that it  
16 is marketed in. They just would not have to deal with  
17 the crossing of area council lines issue.

18 Q Oh, I see. Okay. But, it still, it still  
19 could happen and does happen then that two farmers,  
20 being neighbors, having milk on the same truck in the  
21 northern tier, going to the same manufacturing plant,  
22 would received two different prices depending upon  
23 which market DFA decided to associate their milk.

24 A I would agree with that, yes.

25 Q Okay. Do the producers ever have any,

1 individual members, ever have any control about which  
2 market their milk is going to be associated with?

3 A Well, we visit with management about it, but,  
4 the Board, for example, or our individual members do  
5 not make that, does not make that decision.

6 Q Okay. And is it the council of which you are  
7 the chair, that makes decisions about how regional  
8 revenues are going to be distributed or is that some  
9 other group of board members?

10 A Well, we, we are, we familiarize ourselves  
11 with it, but the dividing of the dollars, we leave up  
12 to our managers. As we all know, where we would like  
13 for the dollars to go.

14 MR. VETNE: Yeah, I can imagine that board  
15 room scene. Okay. Thank you.

16 JUDGE BAKER: Thank you, Mr. Vetne. Are there  
17 any other questions for the witness?

18 Yes, Mr. Beshore?

19 REDIRECT EXAMINATION

20 BY MR. BESHORE:

21 Q Just one question, Mr. Siebenbor, one for  
22 clarification.

23 Is it possible that the producers, who are in  
24 close proximity where one's milk is, one producer's  
25 milk has gone to Order 7 and the other producer's milk

1 is on Order 32. They may be located nearby each other,  
2 but not necessarily have their milk picked up from the  
3 same truck.

4 A Yes, that would be the most likely scenario.

5 We are using an extreme case, probably not a good  
6 choice of, but, yeah, that is a more likely scenario.

7 MR. BESHORE: Okay. Thank you.

8 JUDGE BAKER: Thank you. Are there any other  
9 questions? There appear to be none. Thank you very  
10 much.

11 (Whereupon, the witness was excused.)

12 JUDGE BAKER: Mr. Beshore.

13 MR. BESHORE: We have no further testimony  
14 with respect to the pooling issues. Mr. Hollon does  
15 have a further statement, which we would plan to hold  
16 to the end of the hearing, relating to the, to Proposal  
17 VI as well as comments upon the request for emergency  
18 action on the issues in the hearing.

19

20 JUDGE BAKER: All right. So, you, as  
21 proponents, have presented everything you want to  
22 present at this time.

23 MR. BESHORE: At this time, yes.

24 JUDGE BAKER: Thank you very much, Mr.  
25 Beshore.

1                   Well, that brings us then to those who are  
2                   proponents of the remaining proposals, namely eight,  
3                   and on.

4                   MR. ENGLISH: Your Honor, it might make sense,  
5                   Mr. Yates is a witness for Suiza Foods. He has a  
6                   comment on the proposals one through five and eight.  
7                   And then maybe Mr. Vetne can put on his testimony,  
8                   about proposals one through five. And I believe one of  
9                   his witnesses, but if we could have Mr. Yates as the  
10                  next witness.

11                  JUDGE BAKER: Mr. Vetne? I think we are going  
12                  to hear Mr. Yates, first, are we not?

13                  MR. VETNE: Yes. I just wanted to make a  
14                  procedural query.

15                  JUDGE BAKER: Yes.

16                  MR. VETNE: A real line this time. Your Honor  
17                  requested proponent testimony on the other proposals.  
18                  I am not quite sure what that might elicit, but, I  
19                  would like to suggest, if it is possible, we have a  
20                  discreet set of proposals, one through five and seven,  
21                  concerning which there has been proponent testimony by  
22                  proponents. I do not know if there are additional  
23                  supporters of those proposals, but, they are also in  
24                  the nature of proponents, and if there are any, they  
25                  ought to come next. And then so we keep all of that

1 issue in the hearing record bundled in the same place,  
2 I would like to be able to present opposition to one  
3 through five and seven, before we go onto other  
4 proposals.

5 JUDGE BAKER: Well, that is a good suggestion.

6 Just from the information I had, Mr. Vetne, I did not  
7 know that there would be additional testimony, but if  
8 there is on those proposals, we can hear that now.

9 MR. ENGLISH: I think that was the direction I  
10 was heading, because Mr. Yates is going to do exactly  
11 that.

12 JUDGE BAKER: Oh.

13 MR. ENGLISH: As it happens he has a brief  
14 comment on eight as well, but it is primarily comments  
15 one through five.

16 JUDGE BAKER: All right.

17 MR. ENGLISH: And then, I may be wrong, but I  
18 think that maybe all of the people who will testify in  
19 favor of portions of one through five. And that would  
20 make sense for you to put on as to testimony against  
21 one through five and then we can go to eight and nine  
22 and then come back to six, because six I think is  
23 completely different from one through five and seven  
24 through nine.

25 JUDGE BAKER: Very well. Let me inquire. Is

1       there anyone other than Mr. Yates, who does wish to  
2       offer testimony with respect to Proposals 1 through 5?

3                   MR. ENGLISH: And then Mr. Vetne's.

4                   JUDGE BAKER: And Mr. Vetne has, yes, that  
5       would conclude, all right.

6                   Then Mr. Yates, will you come forward.

7                   MR. ENGLISH: That would be great. And we are  
8       passing out prepared testimony.

9                   JUDGE BAKER: Oh, thank you.

10       Whereupon,

11                                   ERNEST YATES

12       having been first duly sworn, was called as a witness  
13       herein and was examined and testified as follows:

14                                   DIRECT EXAMINATION

15                   BY MR. ENGLISH:

16               Q     Mr. Yates, could you state your full name for  
17       the record?

18               A     Ernest Yates.

19               Q     And by whom are you employed?

20               A     Suiza Foods.

21               Q     And for how long have you been employed by  
22       Suiza Foods?

23               A     Four years.

24               Q     And in what position have you been employed  
25       by Suiza Foods for four years?

1           A     Director of Dairy Procurement.

2           Q     Okay. And prior to that time, by whom were  
3 you employed?

4           A     Fleming Foods.

5           Q     What was your position at Fleming Foods?

6           A     The same.

7           Q     For about how many years?

8           A     About 10 or so.

9           Q     And prior to that did you have experience in  
10 the dairy industry?

11          A     Yes, I worked for a regional dairy  
12 cooperative.

13          Q     And for how long did you work for that  
14 regional dairy cooperative?

15          A     Five years.

16          Q     And were you involved in milk procurement at  
17 that time?

18          A     Yes, I was.

19          Q     And prior to that time, what were you  
20 employed as?

21          A     School teacher.

22          Q     Have you had any other involvement in the  
23 dairy industry prior to that time?

24          A     I was raised on a dairy farm in Middle,  
25 Tennessee.

1           Q     Would you please give your prepared  
2 statement?

3           A     Yes. My name is Ernest Yates, I am Director  
4 of Dairy Procurement for Suiza Foods Corporation.  
5 Suiza operates seven predominantly Class I pool  
6 distributing plants on Order 32, Meadow Gold Dairies,  
7 Delta, Colorado, Meadow Gold Dairies, Inglewood,  
8 Colorado, Morningstar Foods, Greeley, Colorado,  
9 Robertson Dairy, Denver, Colorado, Land to Sun,  
10 O[Fallon, Illinois, Meadow Gold Dairies, Lincoln,  
11 Nebraska and Meadow Gold Dairies, Tulsa, Oklahoma.

12                     Our ability to obtain raw milk for Class I  
13 bottling and our resulting raw milk procurement costs  
14 are tied directly to pooling provision of federal milk  
15 orders. In particularly as a Class I bottler, that  
16 pays the Class I differential on the vast majority of  
17 our milk, it is important to note that it is blend  
18 prices, and especially relative blend prices that move  
19 milk to where it is needed.

20                     The new central order following Federal Order  
21 Reform has created special challenges with respect to  
22 relative blend prices. AMS in Federal Order Reform  
23 believe that the new central order would have a 50  
24 percent Class I utilization. The proposed final rule,  
25 64, Federal Register at page 16072. Instead, central

1 order Class I utilization of 28.6 percent for the year  
2 2000 and 25.4 percent for the first nine months of 2001  
3 are far below that predicted Class I utilization level.

4 The difference in Class I utilization has real world  
5 impact.

6 Our Land to Sun Operation in O'Fallon,  
7 Illinois has provided excellent if difficult example.  
8 On a Class I differential at the Land To Sun facility  
9 remain virtually unchanged, \$2.01 per Federal Order  
10 Reform and \$2.00 post Federal Order Reform. It is  
11 significant that the post Federal Order Reform blend  
12 price return to dairy farmers at that location relative  
13 to dairy farmers delivering to plants regulated on  
14 Order 5 and 7 has deteriorated significantly. We now  
15 have difficulty procuring milk for that location even t  
16 though prior to Federal Order Reform, there was never  
17 any such difficulty in procuring milk at that location.  
18 The loss of local milk in Missouri and Illinois to  
19 other marketing areas is illustrated on Table 11 of the  
20 Market Administrator's Exhibit 5.

21 For Illinois, for the first nine months of  
22 2001, milk produced in Illinois and pooled on Order 32  
23 is down 46 million, 479 thousand, 764 pounds or five  
24 percent. Similarly milk produced in Missouri and  
25 pooled on Order 32 is down 68 million, 705 thousand,

1       064 pounds or 20 percent. With Federal Order Reform we  
2       have nearly identical Class I differential but a  
3       significantly lower relative blend price at O'Fallon.  
4       The relative blend price difference, which is in  
5       English Number 9 Table, between St. Louis and  
6       Evansville, Indiana in 1998, pre Federal Order Reform,  
7       was 38 cents. In 2000 the relative blend price  
8       difference between these same locations was a \$1.80.

9               We are paying essentially the same but have a  
10       lot less potential to attract the milk supply. Federal  
11       Order Reform has put St. Louis distributing plants at a  
12       competitive disadvantage. We do not object to the  
13       present level of price, if that is needed to encourage  
14       an adequate supply, but at least some of the dollars  
15       that we are paying should be used to attract milk  
16       supply to our plant. Unfortunately, this does not  
17       occur.

18               While this hearing is a legitimate attempt to  
19       deal with some of the underlying problems resulting in  
20       lowered blend prices, we believe that the solutions  
21       proposed largely deal with the problems at the margins.  
22       The real question we ask is whether Federal Order  
23       Reform as a result of legislative action has resulted  
24       in a federal order which is so large, geographically  
25       diverse and subject to such different marketing

1 conditions as to be unreliable. Stretching 1223 miles  
2 west to east, from the Meadow Gold facility in Delta,  
3 Colorado to the Prairie Farms Plant in Onley, Illinois,  
4 and 600 miles north to south from the Dean Foods  
5 facility in Suez Falls, South Dakota to the Highland  
6 Dairy plant in Channel, Oklahoma, a central order has  
7 resulted in blend prices at the various locations cost  
8 rather than alleviate disorderly marketing.

9           While adoption of proposals that make  
10 distance milk perform or choose not to be on the pool,  
11 should result in higher Class I utilization and thus  
12 higher blend prices overall, we doubt that adoption of  
13 these proposals will in any real way deal with the  
14 problems we are facing and attracting on milk supply at  
15 O<sup>o</sup>Fallon. We have a similar problem attracting milk to  
16 the Delta facility in Western Colorado. Again, a  
17 problem that did not exist prior to Federal Order  
18 Reform. Ultimately, the question for USDA with respect  
19 to the legislative command that federal orders decrease  
20 rather than increase disorderly marketing condition, is  
21 whether the Central Order meets the declared policy of  
22 the AMAA.

23           We urge immediate and emergency consideration  
24 of both these issues in this hearing and the larger  
25 issue that we have raised today. As to the hearing

1 proposals under consideration here today, we have the  
2 following specific comments and reserve the right to  
3 support or oppose specific proposals on brief.

4 Pooling of milk must be directly tied to  
5 performance. There is no justification to permit  
6 pooling of all milk on the Central Order regardless of  
7 the location where it produced, unless that milk is  
8 actually a viable source and available to the fluid  
9 market that generates the pool dollars. Moreover,  
10 there is no need for the same milk to be qualified for  
11 pool benefits on two orders, regardless of whether both  
12 of those orders are federal, or one of the two orders  
13 is a state operated marketwide pool. The handler on  
14 such, of such milk should choose on which order the  
15 milk will be pooled. Double pooling of the same milk  
16 simply should not be permitted. The market  
17 administrator's chart titled "English Number Six" shows  
18 that such milk is outside a 500 mile radius from any  
19 existing Central Order pool distributing plant. Such  
20 milk cannot realistically be available to the Class I  
21 market on a regular basis. If that milk is diverted to  
22 a plant outside the 500 mile radius perhaps another  
23 solution would be to treat the diverted milk as Class I  
24 milk at the plant to which it was diverted.

25 Shipping percentages should be both realistic

1 and real. Diversion limitations should also be both  
2 realistic and real. We understand that the present  
3 order provisions permit, permitting pooled milk such  
4 that the delivery of one million pounds of 9(c) milk to  
5 a 7(a) handler can qualify up to 15 million additional  
6 pounds of distant milk that never is delivered to a  
7 pool distributing plant. We oppose such pyramid  
8 pooling.

9 Three. We do not agree that shipments to  
10 7(e) plants that are not also 7(a) plants should be  
11 qualifying shipments with respect to shipping  
12 percentages. The relatively large non Class I volume  
13 of milk associated with such 7(e) plants is not the  
14 same as a relatively small non Class I volume  
15 associated with 7(a) plants. Permitting those  
16 operations to receive shipments as qualifying shipments  
17 will reduce the actual need for qualifying shipments of  
18 milk made to Class I pool distributing plants. We also  
19 believe that when the market administrator takes into  
20 consideration the need to increase or decrease shipping  
21 percentages, he has not taken Class II volume into  
22 consideration.

23 Four. There is no need for a separate  
24 cooperative supply plant definition on this order,  
25 especially as no plant is presently qualified pursuant

1 to Paragraph 7(d). In fact, we question the need today  
2 for any supply plant definition at all. We recognize  
3 that there is no proposal to eliminate 7(c) and 7(f)  
4 plant provisions, but note that existing order  
5 provisions regarding producer milk, 9(c) milk and  
6 diversions effectively eliminate the need for supply  
7 plants in their entity. Historically supply plants  
8 were needed, but a number of years ago became obsolete  
9 and 9(c) provision was introduced into federal orders  
10 to accommodate the movement of milk for more distant  
11 areas.

12 Five. The touch base provision is as  
13 important, if not more important than the actual level  
14 of shipping percentages, since there is no proposal to  
15 increase the touch base provision from the one day's  
16 production provision, it is all the more important to  
17 eliminate the automatic supply plant definition. A  
18 commitment to supply the Central Order and the decision  
19 to be pooled on the order should be a year round  
20 commitment, requiring monthly qualifying shipments to  
21 pool plants.

22 Thank you for your time and consideration.

23 Q Mr. Yates, there is also a proposal by Dairy  
24 Farmers of America and others to eliminate the  
25 provision that permits qualifying shipments to pooled

1 distributing plants under other orders. Do you have  
2 any comment on that proposal by DFA?

3 A Chip, ask me that again, I wasn't focused.

4 Q With respect to the proposal by DFA, to  
5 eliminate the right for qualified shipments by making  
6 shipments to pooled distributing plants under other  
7 orders.

8 A I favor that elimination.

9 Q In your testimony you referenced the  
10 automatic supply plant definition, is that also known  
11 as the free ride provision?

12 A Yes.

13 MR. ENGLISH: That is all that I have at this  
14 time.

15 JUDGE BAKER: Thank you, Mr. English.

16 Are there other questions for Mr. Yates? Mr.  
17 Vetne.

18 CROSS EXAMINATION

19 BY MR. VETNE:

20 Q Good morning, Mr. Yates. I am John Vetne. I  
21 represent a group of upper Midwest Cooperative  
22 Associations in this proceeding.

23 I wanted to ask you a couple of questions on  
24 your testimony. Well, actually more than a couple. On  
25 page two you refer to milk in Illinois, at the bottom

1 of the paragraph ending in the middle of the page. And  
2 you compare volumes of milk pooled in Order 32 as being  
3 down five percent or 20 percent, well, Illinois and  
4 Missouri. It is not clear from my reading or listening  
5 to your testimony compared to what? Are you comparing  
6 to --

7 A On the exhibit, comparing the numbers on the  
8 exhibit is down that many pounds.

9 Q Okay. So, the comparison is for nine months  
10 of 2000(sic) as opposed to the 12 months of 2000? I  
11 didn't do the arithmetic, I just wanted to know if you  
12 did. It is a nine month comparison to a nine month  
13 comparison.

14 A Yes, I don't have it on me, I would double  
15 check it, but I think it is.

16 Q Okay. And on the following page, again, in  
17 the middle, you refer to a plant in Western Colorado  
18 and I am grateful for that reference because nobody  
19 else has complained about Western Colorado to any  
20 degree, so, let me find out what is going on there.

21 That portion of Order 32 in Western Colorado  
22 is adjacent to the mountain, the New Mountain Market,  
23 is that correct?

24 A Well, that, the western.

25 Q The western, yeah. Oh, yeah. At one point

1 it was going to be called the Mountain, the Western  
2 Market.

3 Relative to the Western Market at Grand  
4 Junction, how do blend prices compare?

5 A Before?

6 Q Currently. Currently, currently, the  
7 producer price differential in the Grand Junction  
8 procurement area pooled on Order 32 compared to the PPD  
9 in the western?

10 A I don't have those numbers in front of me,  
11 but it is a similar situation as with O'Fallon. Their  
12 relative blend price before Federal Order Reform, is a  
13 lot less than the neighboring markets. The utilization  
14 at that plant has effectively been reduced. And,  
15 therefore, the relative blend price at that plant is  
16 lower.

17 Q The relative blend price. This was the  
18 Western Colorado pool plant?

19 A Yes.

20 Q Prior to January of 2000?

21 A Yes.

22 Q Okay. And prior to January 2000, there was a  
23 pretty good blend price for producers delivering to  
24 that plant?

25 A It was higher than what it is now.

1 Q Okay. Do you know --

2 A It was relatively higher than what it is now.  
3 Of course, milk prices change every month.

4 Q Okay. Yes. We are talking, disregarding the  
5 mover basically, whatever that might be, we are talking  
6 currently the PPD, producer price differential and  
7 previously the difference between the blend price and  
8 the basic formula price.

9 A Well, I make the comparison between whatever  
10 the blend price is, the effective blend price, before  
11 and after. You still have an effective blend price of  
12 delivering milk to a plant.

13 Q Part of that has nothing to do with Federal  
14 Order Reform. It has to do with National Class III.

15 A The PPD, I think is, what is left over after  
16 you pay the producers, protein and butter fat and other  
17 solids and what not. So, I don't, I guess I am just  
18 not agreeing that that is the, that would be a good,  
19 you know, the best comparison. Maybe it is, I just  
20 don't know.

21 Q The mover since Federal Order Reform and  
22 before Federal Order Reform in both cases were  
23 essentially a manufacturing use price, am I correct?

24 A Yes.

25 Q Okay. And whatever is distributed to

1 producers, whether it is PPD or schematic sell plus and  
2 minus, whatever is distributed to producers, in  
3 addition to the manufacturing price level, is a blended  
4 return, correct?

5 A Okay.

6 Q Okay. And it is that blended return to which  
7 you are referring, am I correct?

8 A Yes.

9 Q Okay. What was the Class I utilization in  
10 Western Colorado upon which producers received the  
11 blended price prior to January 2000, Federal Order  
12 Reform?

13 A I don't recall.

14 Q Okay. How many plants, distributing plants,  
15 associated with the Western Colorado market prior to  
16 Federal Order Reform?

17 A Not many.

18 Q One?

19 A Our plant is there. I think that is the only  
20 one, but I am not sure.

21 Q Okay. What is the Class I utilization of that  
22 plant?

23 A It is predominantly a Class I plant.

24 Q Above 80 percent?

25 A I don't know.

1           Q     Do you have a belief as to whether it is  
2 higher than 80 percent or lower than 80 percent?

3           A     I have no opinion on that. No knowledge.

4           Q     You have given an opinion of relative blend  
5 prices, relative blend prices before and after Federal  
6 Order Reform.

7           A     Right.

8           Q     But, you do not have specific information on  
9 what the blend price for utilization that market was  
10 before Federal Order Reform.

11          A     Not in front of me, I don't.

12          Q     Okay. Can you, do you have it available to  
13 you, like really quickly? And if I asked you, would  
14 you provide the information?

15          A     I don't know if it is in one of the tables.

16          Q     It is not.

17               MR. ENGLISH: Yes, it is. That is his part,  
18 Table 10.

19               (Pause.)

20               THE WITNESS: Okay. This table, which is  
21 labeled, "English Number 10" has the blend prices at  
22 certain locations, Grand Junction or Delta, Colorado is  
23 one of those locations. And in 1999 the yearly, the  
24 annual blend price was 1535. And one of the nearby,  
25 well, somewhat nearby relative, nearby markets, Salt

1 Lake City, the blend price that year was 1369. And if  
2 I am doing my math right that is \$1.66 difference  
3 between Grand Junction and Salt Lake City. Now, after  
4 Federal Order Reform, say the Year 2000, the blend  
5 price at Grand Junction was 1127, the blend price at  
6 Salt Lake City was 1119. And the difference is eight  
7 cents. So, we have a \$1.66 spread reduced down to six  
8 cents. And I guess my point is, is that was a  
9 disadvantage to our plant in Grand Junction. They had  
10 that many less dollars to attract milk over to the  
11 Grand Junction area.

12 BY MR. VETNE:

13 Q The supply to Grand Junction, is that  
14 independent producer milk or cooperative milk?

15 A It is cooperative milk.

16 Q And it is the same cooperative before and  
17 after Federal Order Reform?

18 A Yes.

19 Q Okay. And would it be fair to characterize  
20 that market as effectively being an individual handler  
21 pool because of the few numbers of distributing plants  
22 and suppliers?

23 A You mean before Federal Order Reform?

24 Q Yes, before and after. Well, before, not  
25 anymore, of course.

1           A     I like that term, but, you know, I don't know  
2 if that was in any of the regulations.

3           Q     No, you understand what I mean by individual  
4 handler --

5           A     Yes. If there is only one handler in a  
6 marketwide pool, it is effectively an individual  
7 handler.

8           Q     And there is certain economic incentive to  
9 associate Class I with that market, but not Class II or  
10 Class III.

11          A     Well, there is a certain incentive for a  
12 bottling plant that is paying for milk to have those  
13 dollars go to the producers that are supplying milk for  
14 that plant instead of being diluted, pay the farmers  
15 that do not deliver to that plant.

16          Q     Do you have knowledge about how the  
17 cooperative members that were delivering to your plant  
18 were paid from the proceeds that you remitted to the  
19 cooperative associations?

20          A     I am not sure, I am not sure on that. We pay  
21 the cooperative, and so we consider the cooperative the  
22 producer.

23          Q     Okay. So, you don't have any knowledge about  
24 whether they, the differences that you refer to, pre  
25 versus post, relative blend prices, were actually

1 translated in dollars paid to your individual, not your  
2 individual, to the dairy farmers delivering to your  
3 plant?

4 A Well, it was paid to the cooperative, who, so  
5 if it is paid to the cooperative, the cooperative has  
6 incentive, just like an individual dairy farmer would  
7 have the incentive to deliver milk to the plant. So, I  
8 mean, it is indifferent to us, as long as the incentive  
9 was there to the, to the ones, or the entity that was  
10 making the decision to send the milk over to the plant.

11 Q Under the current scheme of relative prices,  
12 are not the Mountain blend prices or PPDs lower than  
13 the Order 32 PPDs at Grand Junction?

14 A That would be my sense of things, but, I have  
15 not compared them.

16 Q Okay. Do you have any, have you experienced  
17 any specific instance where milk that supplies the  
18 Grand Junction plant is being attracted away from Grand  
19 Junction to secure a better PPD elsewhere?

20 A Indirectly, yes.

21 Q Indirectly, how?

22 A Well, now that the relative blend price at  
23 that plant is less, the producers or cooperatives that  
24 are supplying that plant, they want more premiums,  
25 higher premium to draw the milk to the plant.

1           Q     Where, what are the other markets available  
2     that are more lucrative for the producer milk in the  
3     milk shed supplying Grand Junction?

4           A     I think that the reserve supply or not all  
5     the milk, there is not enough milk produced in the  
6     Western Colorado area. There is not enough produced to  
7     supply that plant, so they have to bring milk in and  
8     then as they bring milk in, they make the decision is t  
9     here enough money to, is the blend price high enough at  
10    Grand Junction to pay for that milk to come over.

11          Q     Do you know of any specific instance, either  
12    personally or antidotally of a producer being moved  
13    away from delivery to your plant to another market  
14    where the returns were better?

15          A     I just, I am aware that there is, that the  
16    producers or cooperatives delivering, supplying our  
17    plant, they say that they need more money to supply  
18    that plant. So, I am assuming that they are, you know,  
19    being tempted to deliver that milk somewhere else  
20    because it is more lucrative.

21          Q     But, you don't, you don't know either  
22    antidotally or personally where that other place might  
23    be?

24          A     I can't give you an accurate answer. I can  
25    guess, but I would rather not guess.

1 Q Okay. By the way when Mr. English introduced  
2 you, you related four years of working for one company  
3 and 10 years for working for a prior company. That  
4 entire 14 years of experience, has it all been at the  
5 same location, same plant?

6 A Yes, it has.

7 Q The plant in Nashville, Tennessee.

8 A Yes.

9 Q In the past, before the Nashville, Tennessee  
10 plant was, well, first of all, when, when, DFA now  
11 supplies the Nashville plant, right?

12 A Yes.

13 Q And at some point in the past the Nashville  
14 plant was supplied by suppliers other than DFA,  
15 correct?

16 A Yes.

17 Q And at a point when, and you were responsible  
18 for those procurement activities, correct?

19 A Yes.

20 Q Okay. When, when did the plant start being  
21 supplied by DFA, was that approximately four years ago  
22 when Suiza required the plant?

23 A No. That didn't, there wasn't a change made  
24 at the same time, but since then.

25 Q Since, so shorter than four years ago.

1           A     Yes.

2           Q     Okay.  Prior to DFA's supply of that plant,  
3     was the Nashville plant supplied by both nearby and  
4     distant milk suppliers?

5                   MR. ENGLISH:  May I interpose an objection?  
6     The supply of the Nashville plant four years and prior  
7     ago, I don't think has anything to do with this  
8     proceeding.  And I think we ought to move on.  You are  
9     talking about Nashville four years ago, plus.  I would  
10    also, I would add that at some point this does get into  
11    priority information.  The witness is certainly well  
12    versed, but I think at some point this has strayed  
13    beyond the purposes of this hearing.

14                   JUDGE BAKER:  Thank you, Mr. English.  Mr.  
15    Vetne?

16                   MR. VETNE:  I would take about two minutes,  
17    Your Honor, and it is very, I will connect it, I  
18    promise, two minutes.

19                   JUDGE BAKER:  How are you going to connect it?

20                   MR. VETNE:  The witness, well, how about this,  
21    I will make an offer of proof.

22                   First of all, it is not priority, the  
23    questions I am going to ask and Mr. Yates and I  
24    discussed this as well and Mr. English was  
25    present off the record, earlier.  Not very many years

1       ago the Nashville plant received a regular supply of  
2       producer milk from New Mexico on virtually daily basis,  
3       high quality milk that came on the truck within hours  
4       after milking and, and arrived across that distance  
5       fresh and very beneficial for the plant in Nashville.  
6       This proceeding, among other things, involves some  
7       alarm, for example, at milk traveling long distances,  
8       that this shouldn't be done and it hasn't been done in  
9       the past.

10               And secondly, there was a DFA witness earlier  
11       who testified that it is undesirable to ship milk over  
12       long distances because the quality isn't good and this  
13       witness can answer, can address that issue that was  
14       elicited by a DFA producer witness earlier, concerning  
15       the quality that may be expected in milk that has  
16       traveled over a long distance.

17               So, there are two specific issues, both of  
18       which directly relate to evidence presented by  
19       proponents that address these proposals.

20               JUDGE BAKER: Very well, there was testimony  
21       and evidence relative to the 500 mile radius and so  
22       forth. So, go ahead, Mr. Vetne.

23               BY MR. VETNE:

24               Q     Is that correct, Ernie?

25               A     Could you restate your question?

1           Q     Yes.  Okay.  Prior to the plant being supplied  
2 by DFA, the Nashville plant was supplied with producer  
3 milk including a regular milk supply from New Mexico.

4           A     Somewhat regular, yes.

5           Q     Okay.  And that milk, much of that milk, was  
6 that good quality milk arriving at your plant?

7           A     Yes.

8           Q     Yes.  And it was in most cases loaded onto  
9 the tanker truck sooner, much sooner after milking than  
10 your regular local milk supply, correct?

11          A     Yes.

12          Q     And how far was the New Mexico supply from  
13 your plant in Nashville?

14          A     Quite a ways.

15          Q     Quite a ways.  More than 500 miles?

16          A     Yes.

17               MR. VETNE:  Yes.  Okay.  Thank you.

18               JUDGE BAKER:  Very well, are there any other  
19 questions for this witness?  Ms. Brenner?

20                               CROSS EXAMINATION

21                               BY MS. BRENNER:

22           Q     Mr. Yates, in terms of this supply of milk  
23 from New Mexico at Nashville, we are talking about milk  
24 that actually made the trip from New Mexico to  
25 Nashville, is that correct?

1           A     That was milk, yeah, that was actually  
2 delivered and performed, I consider that performing,  
3 yes.

4           Q     Do you know if the folks that were pooling  
5 that milk were also pooling a large chunk of milk that  
6 wasn't moved from New Mexico to Nashville?

7           A     It is my understanding that that was not  
8 happening. That they were not pooling other milk. We  
9 actually purchased milk from one farm and so, it  
10 wasn't --

11          Q     And you were getting all the production from  
12 that farm?

13          A     No, the rest of the production went to  
14 another distributing plant on another order, which it  
15 is my understanding that milk was pooled on that other  
16 order at that plant.

17                   MS. BRENNER: Thank you.

18                   JUDGE BAKER: Are there any other questions?  
19 Mr. Cooper?

20                   MR. COOPER: Yes.

21                                   CROSS EXAMINATION

22                   BY MR. COOPER:

23           Q     What is your position on Proposal seven?

24           A     Which one is that?

25           Q     I think that is the one that grouped each

1 particular state on the shipping percentage.

2 A I am in favor of the proposal. I am in favor  
3 of that concept.

4 MR. COOPER: Okay. Thank you.

5 JUDGE BAKER: Are there any questions of Mr.  
6 Yates? Yes, Mr. Beshore.

7 CROSS EXAMINATION

8 BY MR. BESHORE:

9 Q Mr. Yates, are you, in your support of  
10 Proposals 1 through 5, does that include the support  
11 for the net shipments modification that Mr. Hollon  
12 requested, that performance ought to be subject to  
13 being a real performance, not a pump in and pump out  
14 performance?

15 A I don't want to get into that. I have  
16 different opinions on that because if milk is actually  
17 delivered to a Class I facility, at least it is there.  
18 I mean, it is performing to the point that they are  
19 delivering it. If we pump it in our shilos, then it is  
20 our decision whether we are going to pump it back out  
21 again. So, you know, when I complain about the milk  
22 from distant areas that doesn't perform, if they go to  
23 all the trouble to haul it down there, then I have a  
24 little bit of a problem being, you know, opposed to,  
25 opposed to that.

1 Q You know you couldn't keep it, and use it for  
2 your --

3 A I could keep it. If it is my silo --

4 Q Even though you didn't keep it.

5 A Oh, well, I am just saying they actually  
6 delivered it to the plant, so, I don't have a strong  
7 opinion or either way on that.

8 Q It is better than nothing.

9 A Yeah.

10 Q Okay. I am interested just a little bit in  
11 your comment number three on page four, about 7(e)  
12 plants and 7(a) plants.

13 You do, Suiza processes Class II products,  
14 does it not?

15 A Yes.

16 Q And in some locations they are done under the  
17 same roof as the Class I facility?

18 A Absolutely.

19 Q And other locations they are done in separate  
20 facilities.

21 A Yes.

22 Q Okay. Is it your position that there should  
23 be different treatment to those, to a set of Class I  
24 and Class II operations depending on whether it is  
25 under roof or under two roofs?

1           A     Well, I think that is consistent. There is  
2     discrimination against them now. Our 7(a) plants, we  
3     cannot, we don't have the flexibility of not pooling  
4     the Class II and non Class I milk there, so.

5           Q     Okay. But, if they are in a unit, under this  
6     order, there is no flexibility of not pooling it, is  
7     there?

8           A     Ask me that again.

9           Q     If a plant is in a 7(e) unit, under Order 32,  
10    it is pooled as, it has to be pooled, correct?

11          A     Well, it can be pooled, but, you mean, the  
12    non, the lower Class I plant that wouldn't be pooled  
13    are the --

14          Q     Right.

15          A     The plant with the lower utilization wouldn't  
16    that be pooled.

17          Q     Right.

18          A     If, you know, you have the choice of pooling  
19    it or not pooling it, depending on whether the Class II  
20    price, how close it is to the blend price in the  
21    market.

22          Q     Well, you don't have the same choice if it is  
23    in a unit as if it is not in a unit, do you?

24          A     You can bust the unit up, I think.

25          Q     From year to year or from month to month?

1           A     Month to month.

2           Q     Okay.  And that is your concern with whether  
3 those deliveries should qualify as shipments?

4           A     Yes, if we could not pool the non Class I  
5 milk at our 7(a) plants, well, then I would probably  
6 change my mind on that.

7           MR. BESHORE: Okay.  Thank you.

8           JUDGE BAKER: Thank you, Mr. Beshore.

9           Are there other questions?  Mr. English?

10                               REDIRECT EXAMINATION

11                               BY MR. ENGLISH:

12           Q     Let me see if I can help clarify something.  
13 The reference to the 500 mile radius in your testimony  
14 at page four, immediately followed your testimony about  
15 double pooling, correct?

16           A     Right.

17           Q     If milk is receiving the benefits of the pool  
18 in one part of the country, that means it is available  
19 for Class I use in that part of the country, correct?

20           A     Right.

21           Q     And is your statement basically that that  
22 same milk can't really be available for the Class I  
23 market in another part of the country simultaneously?

24           A     Yes, that is my statement.

25           Q     And so the real point is that under those

1       circumstances of double pooling, if a plant is located  
2       500 miles outside the closer distributing plant, that  
3       that isn't legitimately available for Class I use under  
4       those circumstances?

5             A     Right.

6             Q     And that, therefore, takes into consideration  
7       your historical experience of moving milk a thousand  
8       miles to Nashville.

9             A     Right.

10            MR. ENGLISH: That is all I have.

11            JUDGE BAKER: Thank you. Are there other  
12       questions? Apparently there are none. Thank you so  
13       much.

14                     (Whereupon, the witness was excused.)

15            JUDGE BAKER: Mr. English or Mr. Vetne. Is  
16       Mr. Vetne is going to go first?

17            MR. ENGLISH: Yes.

18            JUDGE BAKER: All right.

19            MR. ENGLISH: I have no further witnesses on  
20       Proposals 1 through 5. Mr. Vetne has some witnesses,  
21       one of whom also will testify on Proposal 8, which is  
22       something that Suiza and Anderson, and then I have a  
23       witness on Proposal 8 after everybody else has  
24       testified for proponents for Proposal 8.

25            JUDGE BAKER: Very well.

1           MR. ENGLISH: Which logically comes after the  
2 one through five, because again eight is related.

3           JUDGE BAKER: Very well. Is there anyone here  
4 other than Mr. Vetne who wants to testify with respect  
5 to Proposals 1 and 5, in any regard, for or against or  
6 otherwise? Let the record reflect that there is no  
7 response.

8           MR. VETNE: Let me make it clear, I don't, I  
9 don't intend to testify.

10          JUDGE BAKER: No, no, I understand that, Mr.  
11 Vetne. I should say other than Mr. Vetne's  
12 presentation. That is what I should have said.

13                   (Pause.)

14          Whereupon,

15                               CURTIS KURTH  
16          having been first duly sworn, was called as a witness  
17 herein and was examined and testified as follows:

18                               DIRECT EXAMINATION

19                               BY MR. VETNE:

20           Q     Mr. Kurth, you have been sworn in. Do you  
21 have a prepared statement?

22           A     Yes, I do.

23           Q     Okay. And you identify yourself and your  
24 affiliation on the first line, paragraph of that  
25 statement, correct?

1           A     Right.

2           Q     Before you read that, however, could you give  
3     us a thumbnail sketch of your experience and position  
4     in the dairy industry?

5           A     Well, at the present time, I am a vice  
6     president for Foremost Farms and with Foremost Farms  
7     and its predecessors, since 1971. Prior to that, I  
8     worked for a couple of cooperatives and priorities, so,  
9     I started in the industry in 1958.

10          Q     Have you been employed by cooperative  
11     associations during all or most of that time?

12          A     Most of that time.

13          Q     Okay. Could you proceed with your prepared  
14     statement, please.

15                 THE WITNESS: Right.

16                 Before I start, Your Honor, this testimony is  
17     also in behalf of, in addition to Foremost, Associated  
18     Milk Producers, Land O' Lakes, Family Dairies, Midwest  
19     Dairymen and First District Association.

20                 JUDGE BAKER: Thank you, Mr. Kurth.

21                 THE WITNESS: My name is Curtis Kurth and I am  
22     employed by Foremost Farms, U.S.A. My mailing address  
23     is E 10889A Penny Lane, P.O. Box 111, Baraboo,  
24     Wisconsin 53913.

25                 Foremost is a dairy cooperative with

1 approximately 4,800 members in Wisconsin, Minnesota,  
2 Iowa, Illinois, Indiana, Ohio and Michigan. Foremost  
3 owns and operates manufacturing facilities in  
4 Wisconsin, Minnesota, and Iowa, along with two  
5 distributing plants in Wisconsin. In addition to  
6 supplying milk to our own facilities we also supply  
7 distributing plants in Orders 5, 30, 32 and 33.

8 Foremost and its predecessors have served the  
9 same distributing plants in this market for over 30  
10 years. Prior to order consolidation, we served Orders  
11 32, 50 and 79. Our sales to these two customers have  
12 not changed since order consolidation. In August of  
13 1999, 55 percent of our sales were to Orders 32 and 50  
14 and 45 percent of our sales to Order 79. In August in  
15 2001, sales to plants in old Orders 32 and 50 were the  
16 same, 55 percent and to old Order 79, the same 45  
17 percent.

18 Because of the requested changes in Proposals  
19 1 and 5, had Foremost been pooling the maximum  
20 allowable milk in the previous orders, we would be  
21 forced to remove 60 percent of the producer receipts  
22 that were associated with the orders prior to the  
23 consolidation. What happens when milk is forced to be  
24 removed from Order 32? Statistics indicate most of  
25 this milk will be pooled on Order 30. The difference

1 in the producer price differential will widen and cause  
2 even more problems than have already existed. During  
3 the 12 month period from September 2000 through August  
4 2001, the average PPD in Order 32 was 32 cents per  
5 hundred weight higher than in Order 30. The range was  
6 from three cents to 65 cents.

7 Our numbers indicate that 400 million pounds  
8 of milk could be removed from Order 32 and added to  
9 Order 30. This change, assuming it was all Class III,  
10 would have increased the 32 cents difference to 91  
11 cents. A range then of 26 cents to \$1.76.

12 Since I see no net shipment provision  
13 proposal, I am assuming that the proponents will still  
14 be able to pool milk from other organizations, which  
15 may not remove the entire 400 million pounds, but make  
16 competitive problems even worse.

17 Now, since I put this together, and not  
18 included in the original proposal by DFA and Valley  
19 Prairie Farms, Mr. Hollon did testify yesterday as to a  
20 net shipment provision, I believe he said supported by  
21 DFA and Prairie Farms. So, you can almost forget this  
22 paragraph right now.

23 The average Wisconsin member of Foremost  
24 Farms is a herd of approximately 70 cows. Foremost  
25 producers, producer members are small businesses within

1 the meaning of the regulatory Flexibility Act with  
2 gross farm income below, in most cases, far below,  
3 750,000 dollars a year. These proposals will have an  
4 enormous adverse effect on the net income of our  
5 producers. Both producers being forced from Order 32  
6 to Order 30 and those already pooled in Order 30.  
7 According to milk production costs in 2000 on selected  
8 Wisconsin dairy farms, published by Gary Frank,  
9 Cooperative Extension, University of Wisconsin, in  
10 Madison, and we will ask for an exhibit number on this.

11 Milk production costs in 2000 for herds of, from under  
12 50 cows to 100 cows averaged from 1065 to 1070 per  
13 hundred weight. Foremost Farms average price during  
14 the calendar year was 1144 for milk in Wisconsin,  
15 Northeast Iowa and Southeast Minnesota. I might add  
16 that is for producer of this size, 70 cows range.

17 The spread between average costs and average  
18 income from milk sales would have left a net margin in  
19 the 74 to 79 cents range for small and medium dairy  
20 farmers. Even though 2000 costs may be different from  
21 2001 costs and others in the industry may prefer to  
22 rely on production costs estimates by USDA or other  
23 sources or by any economic measure, it cannot be  
24 disputed that net income to dairy farmers, if any,  
25 represents a very small fraction of the milk price.

1           If successful in removing 400 million pounds  
2           from Order 32, and adding it to Order 30, thereby  
3           suffering some producers to lose Order 30 producer  
4           revenue and deleting the Order 30 PPD for all dairy  
5           farmers, Proposals 1 and 5 would reduce net income  
6           toward typical producer member by, from nearly 20  
7           percent to over 70. This change would affect some  
8           18,000 producers.

9           Part of Proposal 1 also excludes shipments to  
10          distributing plants regulated under other federal  
11          orders. Obviously, these sales contribute to Order 32  
12          Class I sales, and, therefore, to the PPD. While we do  
13          not have numbers available to calculate the effect, we  
14          oppose this change.

15          Proposal 3 is revising shipping percentages  
16          for a system of supply plants. Systems exist to  
17          promote more efficient movement of milk to distributing  
18          plants. We see no reason for systems having a higher  
19          shipping percentage than individual supply plants. The  
20          one exception to this might be systems that are formed  
21          with multiple handlers. On the whole we oppose this  
22          proposal.

23          Proposal 7 amends producer milk definitions  
24          to require milk to be reported by individual state  
25          units. This certainly discourages efficient milk

1 movement to distributing plants and is in any event not  
2 authorized by the Act as we so argue in our post  
3 hearing brief. Why should an organization with milk  
4 geographic marketing area be required to move milk from  
5 certain counties in Minnesota and Wisconsin if they  
6 already have enough milk in the area, to satisfy the  
7 pooling requirements? This may force milk in the  
8 marketing area to be hauled long distances to make room  
9 for far out milk. If milk is diverted into Class III  
10 or Class IV, does it really make a difference if this  
11 plant is located in or out the marketing area? Any  
12 organization who has these diversions is meeting the  
13 pooling requirements. We strongly oppose this  
14 proposal.

15 The last sheet, Your Honor, is just a summary  
16 of the changes month by month and with removing 400  
17 million pounds from Order 32, adding it to Order 30 and  
18 how it would affect the producer price differentials.

19 JUDGE BAKER: Very well. Mr. Vetne, did you  
20 want that marked as an exhibit?

21 MR. VETNE: Yes. The witness referred in his  
22 testimony to a document by Cooperative Extension,  
23 University of Wisconsin, Madison on milk production  
24 costs for the Year 2000 on certain selected Wisconsin  
25 dairy farms. I have had the exhibit, oh, I am sorry,

1       there is --

2                   JUDGE BAKER: What about this --

3                   MR. VETNE: The last page of Exhibit 17, and  
4       this is the following exhibit.

5                   JUDGE BAKER: Oh, all right, that would be  
6       okay.

7                               (The document referred to  
8                               was marked for identification  
9                               as Exhibit 17.)

10                  JUDGE BAKER: Mr. Kurth?

11                  THE WITNESS: Yes.

12                  JUDGE BAKER: It is the Arctic air up here.

13                  THE WITNESS: Pardon?

14                  JUDGE BAKER: It is the Arctic air.

15                  THE WITNESS: No, no. I wish that was true.  
16       It is allergies. The problem is it is not cold  
17       enough.

18                  JUDGE BAKER: Don't say that.

19                  MR. VETNE: And, Your Honor, I have copies of  
20       Exhibit 18.

21                  JUDGE BAKER: Very well.

22                  MR. VETNE: To share, which I just picked up  
23       from the front desk of the hotel. And there was a  
24       modest logistical snapfoo. It consists of 10 or 11  
25       pages and I asked for 20 copies, and I got a nice stack

1 of 20 sets of page one, 20 sets of page two. I have  
2 been to the same hotel people before, they apparently  
3 move around. But, we will get them collated and  
4 distributed.

5 JUDGE BAKER: Very well. The document  
6 entitled "Milk Production Cost in 2000 in Selected  
7 Wisconsin Dairy Farms" dated July 27, 2001 is marked  
8 for identification as Exhibit 18.

9 (The document referred to  
10 was marked for identification  
11 as Exhibit 18.)

12 BY MR. VETNE

13 Q And Mr. Kurth, the milk production cost  
14 information to which you referred, you are aware that  
15 there are a number of sources for milk production costs  
16 information.

17 A Yes.

18 Q USDA, Economic Research Service, used to  
19 publish it on a regular basis. There are production  
20 costs, total information published by the Market  
21 Administrators, but not broken down like this, Cornell  
22 has some, University of Vermont has some. There are a  
23 variety of sources, correct?

24 A That is right.

25 Q Okay. The, the significant line to which you

1 want to direct the Secretary's attention in this case,  
2 is the line representing average or typical margin for  
3 the dairy farmer to make his living.

4 A That is correct.

5 Q Not the total price --

6 A Yes.

7 Q -- but, what is left over to pay expenses, to  
8 pay for his own labor and so forth.

9 A The price minus his costs.

10 Q Okay. And whatever that, and there are  
11 different theories on how to aggregate these, but, you  
12 have examined other production costs studies from other  
13 sources, also.

14 A Yes.

15 Q And would it be fair to say that as in this  
16 one, which is directed at Wisconsin, that that portion  
17 that represents margin, however it is arrived at and  
18 defined, is uniformly a very small number.

19 A Yes. Sometimes it is no number.

20 Q Sometimes it is less than zero.

21 A That is correct.

22 MR. VETNE: Okay. Thank you.

23 JUDGE BAKER: Very well. Are there any  
24 questions? Yes, Mr. Beshore.

25 CROSS EXAMINATION

1 BY MR. BESHORE:

2 Q Good morning, Curt.

3 A Good morning, Marv.

4 Q I would like to go to your Exhibit 17, first.

5 A Okay.

6 Q Which, this is called [Summary of Changes,  
7 Based on moving 400 million pounds of Class III milk  
8 from Order 32 to Order 30, milk priced at the \$1.75.]

9 The time period used here, the time period on  
10 the exhibit is September 2000 to August 2001, is there  
11 any significance to that choice time?

12 A Not really. We were looking, you know, with  
13 in house, in house, marketing year running from  
14 September through the next August.

15 Q Okay.

16 A Regardless of the order.

17 Q Okay. Now, the actuals here, I take it are  
18 based on just what the actual prices were --

19 A That is right. It would be the actual PPD,  
20 based on minus 25 cents in this case.

21 Q Okay. Did you, in either the actuals or the  
22 estimates or the calculations in the difference here,  
23 how did you consider the issue of California milk?

24 A We didn't consider the issue of California  
25 milk and we took the 400 million pounds based on the

1 numbers we had seen and it said that, you know,  
2 Minnesota, Wisconsin, the production from those two  
3 states had gone, what, 470, 480 million pounds during a  
4 given period. And so we just assumed that maybe 400  
5 million pounds of that total would move. And so, if we  
6 were, if, I understand I think what you are asking, if  
7 we were calculating a PPD change, the California milk  
8 would have not entered into that.

9 Q So, in other words, for Order 30, the actual  
10 includes the present actual volumes of milk that are  
11 being pooled in Order 30 from California, correct?

12 A That would be correct in both Order 30 and  
13 32.

14 Q Okay.

15 A You have to remember now, Marv, when John  
16 said 15 minutes he was taking into consideration  
17 packing.

18 Q I think he was only talking about himself  
19 here.

20 Okay. So, as far as California is concerned,  
21 it didn't take into account the 75 million pounds that  
22 California presently pooled in Order 32.

23 A California milk had no effect on either Order  
24 30 or 32 as we estimated the changes.

25 Q Okay. So, how much California milk is being

1 pooled on Order 30 right now

2 A I can't answer that.

3 Q Two hundred million.

4 A Too much, but, I can't answer that.

5 Q Okay. But, it is a very substantial number.

6 A Yes, yes, it is.

7 Q And I don't recall, if it is 200, 250 million  
8 perhaps.

9 A Somewhere.

10 Q Okay. If that, if that milk were to be  
11 factored out of Order 30, independent of any changes,  
12 yeah, independent of any changes to Order 32, the  
13 tables, the numbers on this exhibit are going to change  
14 noticeably, would they not?

15 A Yeah, they would change if you base it on the  
16 assumption that if the California milk is not pooled on  
17 Order 30, no other milk will replace the California  
18 milk, you know, if you had a 100 million pounds of  
19 California milk, and someone who has the ability to do  
20 it, said, all right, instead of pooling 100 million of  
21 California, I will pool 100 million of Idaho or  
22 whatever, then, of course, it wouldn't have the effect.  
23 But, under your assumption, yes.

24 Q Okay. So, if, if we are going to look at,  
25 look at what is going to happen to blend prices in the

1 area here and if we assume that the hearings that are  
2 pending or now going on here, are going to have an  
3 affect on the ability to pool California milk on either  
4 of these federal orders, you would really want to  
5 factor that into these changes to see what the price  
6 relationships might be, wouldn't you agree?

7 A Only, only if I was convinced that no other  
8 milk would replace it, then, yes, then I would agree.

9 Q Okay. Well, that is the purpose of some of  
10 the other proposals in these hearings, both the hearing  
11 up in Order 30 and this hearing, to address distance  
12 out of area milk such as Idaho.

13 A That is right.

14 Q Wouldn't you agree?

15 A And some of the proposals were to look at  
16 milk that was pooled in both federal order and the  
17 state order with the marketwide pool.

18 Q Okay. So, if, just to follow through, in  
19 terms of Order 30 is we assume for the sake of  
20 discussion, that Order 30 is going to be amended in a  
21 way that, that eliminates the pooling of California  
22 milk and establishes criteria for pooling milk from  
23 other distant locations, such as Idaho, in a way that  
24 Idaho is not going to pool any, there is not going to  
25 be milk pooled there from Idaho. I mean, Kraft won't

1 be able to pay Tonak enough money to make it work. If  
2 you assume that milk is not going to be pooled up  
3 there, these calculations are going to be sufficiently  
4 different.

5 A That is right. You would have to look at  
6 both Order 32, Order 30. And from what you are saying,  
7 subtract the California milk from both calculations and  
8 it would make some change.

9 Q Assume it is not going to be replaced with  
10 other milk.

11 A And assume, that is right.

12 Q Okay. Now, let me go to page two, two of  
13 your statement, at the very top. I need to --

14 (Pause.)

15 THE WITNESS: No, that is not going to help.  
16 Go ahead.

17 MR. BESHORE: Okay.

18 BY MR. BESHORE:

19 Q In the first sentence on the second page of  
20 your statement, you indicate the requested changes and  
21 proposals one and five, had Foremost been pooling the  
22 maximum allowable milk in the previous orders, we would  
23 be forced to remove 60 percent of the producer receipts  
24 that were associated with the orders prior to the  
25 consolidation. And I have to confess, I don't

1 understand what you are saying there and I want to try  
2 to understand. Are you saying that Foremost was not  
3 pooling the maximum milk allowable prior to  
4 consolidation?

5 A Yes.

6 Q You were not?

7 A Yes, we were not at that time. We are not at  
8 this time. And my comparison here is if we were, we  
9 would have had to remove 60 percent of the producer  
10 receipts.

11 Q Okay. So, you are saying that Proposals one  
12 and five, in your analysis, decrease the theoretical  
13 ability to pool milk on the order by 60 percent?

14 A Only if you use the same comparison that we  
15 have, where 55 percent of the sales were in old 32 and  
16 50, and 45 percent of the sales were in old 79. Now,  
17 obviously, if you change those numbers, if you said,  
18 for instance, 70 percent of my sales were in old 79 and  
19 30 percent of my sales were in old 32 and 50, then you  
20 would have to decrease it by more 60 percent. Or if  
21 you went the other direction, it would be less than 60  
22 percent.

23 Q Okay. How do you calculate the 60 percent?

24 A Very carefully.

25 Q Well --

1           A     Well, the 60 percent, Marv, if, you know, you  
2     just take a for instance, let's say your sales were 10  
3     million pounds.

4           Q     Let's just talk about Order 79, old Order 79.

5           A     Old Order 79.

6           Q     Yes.

7           A     Old Order 79, the pooling provisions were  
8     exactly like new, present --

9           Q     Present Order 32.

10          A     Yes.

11          Q     Okay. So, with respect to those pooling  
12     provisions, what, what do you calculate to be the  
13     reduction embedded in Proposals one and five of your,  
14     the capacity of the pool milk?

15          A     Okay. If you looked at old 79, or present 32,  
16     and you compared it to the proposal.

17          Q     Right.

18          A     It would depend, obviously, on the months.  
19     And I used August and I think August under the new  
20     proposal is 25 percent, is that right?

21          Q     Twenty percent.

22          A     Okay. And I believe before it was also 25  
23     percent, but it would really be 25 percent of what hit  
24     a pool plant. So, in theory, if you are pooling the  
25     maximum allowable amount, during the month of August,

1 you would be shipping 25 percent of 25 percent or 0625  
2 or one pound will pool 16, however you want to look at  
3 it.

4 Q Okay.

5 A So, in that instance, if you compared old 79,  
6 or present 32 or old 79 to the current proposal, you  
7 would be cutting it by 75 percent.

8 Q Okay. You are going from one in 16 to one in  
9 four.

10 A That is right. That is correct.

11 Q Okay. And the reduction is a lesser extent  
12 when you compare the old order --

13 A Yes.

14 Q -- 50 and 32.

15 A Yes, old Order 50, you almost had to  
16 disregard because there were no, the diversions really  
17 meant nothing on old 50. But, and I am not sure,  
18 someone here could tell me, I think that old 32 in the  
19 month of August was, I think you had 45 percent  
20 diversions and 35 percent shipments. So, if that were  
21 correct, you would have to ship them. Thirty five  
22 percent of the 55 percent that hit a pool tank. So,  
23 whatever 35 percent of 55 percent is, would be what you  
24 had to ship that particular month.

25 Q Okay.

1           A     I stand corrected, I mean, if someone else  
2     can point out that these are not correct. I am just  
3     going off the top of my head.

4           Q     Okay. Now is it your position in this  
5     hearing, Curt, on behalf of the organizations that you  
6     have indicated you are testifying to, that the one in  
7     16 shipping ratio is the proper ratio for Order 32  
8     today?

9           A     No, that is not my testimony. My testimony  
10    is based on, we are looking at in our instance, and  
11    anyone who has served more than old 79 that is now part  
12    of 32, we are making these provisions more stringent  
13    than they were prior to the order consolidation. And I  
14    think that part is wrong.

15          Q     Well, Order 79, they would be more stringent  
16    than they were for old Order 79.

17          A     I am saying that if you had 55 percent of  
18    your sales in old 32 and 50, and 45 percent of your  
19    sales in old 79, and you were pooling the maximum  
20    allowable amount in the month of August, you would have  
21    to remove 60 percent of that producer milk.

22          Q     Okay. So, you are saying it is being  
23    tightened, it would be tightened up.

24          A     Yes, definitely.

25          Q     From what it was before.

1           A     Yes, in our instance, yes.

2           Q     In your instance.

3           A     Yes.

4           Q     Okay. Of course, it may still be, it may be  
5 loosen even from what it was in other segments of this  
6 consolidated order. For instance, Order 64 or you  
7 know, the portions of Order 106 or the Colorado areas,  
8 you would agree?

9           A     Not, I will agree because I don't know what  
10 the provisions were in those orders.

11          Q     Okay. But, if I understood your response to  
12 my question, you are not taking the position here that  
13 the current 1 to 16 shipping performance is the  
14 performance that fits the needs of this market.

15          A     I, yes, I, no, I would say that the present  
16 pooling provisions are right. I don't know of anyone  
17 who has, excuse me, not had the ability to get Class I  
18 milk.

19          Q     Okay. So, in, you hear Mr. Lee's testimony  
20 yesterday?

21          A     Yes, I did.

22          Q     So, 1 to 16, you would take the position then  
23 that it is, 15 of those loads should be free to be  
24 pooled without shipping at all.

25          A     In that instance, in that particular month,

1       yes.

2               Q     Yeah, well, that is what the order would  
3       allow.

4               A     Yes.

5               Q     Okay. And it would allow even more, what,  
6       in, well, that is what it allows, actually in the free  
7       ride period, you have got a supply plant --

8               A     It would allow --

9               Q     -- it would allow unlimited association,  
10       correct?

11              A     Yes, in summer months it would allow more, in  
12       some of the fall months it would allow less, you know,  
13       you would have 35 percent of 35 percent, which is,  
14       what, 10., whatever.

15              Q     Okay.

16              A     So, at that point, one load would pool 10  
17       instead of 16 or roughly 10.

18              Q     Okay. And is it your position that in, in  
19       the free ride supply plant months there should be  
20       unlimited association without any performance required?

21              A     I don't really, I don't touch on that  
22       proposal.

23              Q     So, you have no position on that?

24              A     Right.

25              Q     The organizations on whose behalf you are

1       testifying, are they operators of supply plants on  
2       Order 32?

3             A     I, excuse me, I don't think Midwest Dairymen  
4       would be, I am not sure. But, the rest of them, yes,  
5       would have supply plants on 32.

6             Q     Okay. And also cooperatives acting as  
7       handlers filing 9(c) reports.

8             A     That would be correct.

9             Q     Okay. Is, to your knowledge, is most of the  
10       milk that is being pooled on Order 32, being pooled  
11       through that 9(c) and supply plant combination that  
12       allows the maximum pyramiding?

13            A     I have no knowledge of that, Marv.

14            Q     Your testimony was prepared before you were  
15       aware of the net shipment provision, which Elvin  
16       testified to yesterday. Are you supportive of a net  
17       shipment provision in Order 32?

18            A     Yes.

19            Q     And that is on behalf of all the  
20       organizations you represent?

21            A     No, it is on behalf of Foremost. You would  
22       have to ask the other individual organizations. We  
23       read the testimony and agreed with the testimony, so I  
24       assume that they would look at it the same way that we  
25       would.

1           Q     Okay. Let me ask a question or two with  
2     respect to the information at the top of the third page  
3     of your testimony with respect to production costs and  
4     the paid price for calendar year 2000, I assume that it  
5     is, is that correct?

6           A     Yes.

7           Q     Now, the 1144 per hundred weight figure, can  
8     you tell us what that is, more precisely? Is that a  
9     mailbox price before hauling, after hauling, three  
10    five?

11          A     No, it would be a net price as for milk  
12    produced. Hauling would, it is a mailbox price.

13          Q     After hauling has been taken out.

14          A     Yes.

15          Q     Okay. And is it a three five price or at  
16    test?

17          A     It would be at test price. At whatever the  
18    component --

19          Q     At test, at --

20          A     Average components, that particular month.

21          Q     For all of Foremost farms in the region you  
22    have identified.

23          A     That is correct.

24          Q     Is that correct? Now, among your 4800  
25    members, Foremost, I am talking about now, can you tell

1 us approximately what portion of them are pooled on  
2 Order 33?

3 A Oh. I can't tell you, but my estimate would  
4 be 13, 1400 perhaps. Well, under one third, I know  
5 that. I guess that is about as far as I can go. I  
6 know it is well under one third.

7 Q Okay. Roughly 25 percent.

8 A Yes, I would say between 25 and 30 percent  
9 probably.

10 Q Okay. How about Order 5?

11 A Oh, a very small amount. It would be  
12 probably one percent or something like that.

13 Q Okay. What is the division of the remainder  
14 between Orders 30 and 32 --

15 A I am sorry. Go ahead.

16 Q Of the remaining 70 to 75 percent of your  
17 membership, how does it, how is it divided in terms of  
18 being pooled on Order 30 or Order 32?

19 A Well, we already went over 32, didn't we?

20 Q In terms of the numbers.

21 A Well, we went over percentagewise. I think  
22 we said between 25 and 30 percent probably.

23 Q That was 33, I believe.

24 A Oh, I am sorry. I was speaking of 32.

25 Q Oh, okay.

1           A     I am sorry.

2           Q     How about 33?

3           A     The rest of it would be split, I would say,  
4     between 30 and 33.

5           Q     Okay. So, between --

6           A     In total. Now, I am talking total Foremost  
7     members.

8           Q     That is what I was inquiring about.

9           A     Right.

10          Q     Total Foremost members.

11          A     Okay.

12          Q     So, it is roughly between 25 and 30 percent  
13     on Order 32 and the remaining 70 to 75 percent split  
14     about evenly between Orders 30 and 33?

15          A     Yes, yes.

16          Q     Okay. Now going back to the paid price  
17     information that you provided. That is for producers  
18     in Wisconsin, Northeast Iowa and Southeast Minnesota,  
19     is that, you know, a paid price subregion for Foremost  
20     Farms?

21          A     Well, I would say a subregion but the  
22     producer prices from that particular area to Ohio or  
23     Indiana or Michigan, would, would be far different.  
24     You know, there might be times that Wisconsin,  
25     Northeast Iowa, Southeast Minnesota would be higher,

1 but certainly not in the last year or so, since we have  
2 had higher of pricing.

3 Q Well, I guess what I was asking, in that, is  
4 the paid price different in Central Wisconsin than it  
5 is in Northeast Iowa and Southeast Minnesota?

6 A It could be, yes. It could be.

7 Q Okay. Is there milk in Northeast Iowa and  
8 Southeast Minnesota and Wisconsin, milk in the same  
9 counties that is pooled on multiple orders, I assume,  
10 Foremost milk?

11 A Sure, it could happen, does happen.

12 Q Okay. But, do you have one uniformed pay  
13 price?

14 A Yes, in that particular area, right. If you  
15 had a producer in a given, what we would call pay zone,  
16 it would not make any difference whether it was Order  
17 32, 30 or 33.

18 Q Now, if we were comparing the 1144 per  
19 hundred weight price there, paid price in calendar  
20 2000, should we compare that to the Order 30 price for  
21 2000 or the Order 32 price for 2000 or some other  
22 federal order price?

23 A Well, I am not sure that we can compare it to  
24 any one of those. It is just 1144 price and there  
25 obviously would be some mixture of 32, 30 and 33. Now,

1 the percent of milk in 33, obviously would be much  
2 smaller as you looked at this group of producers  
3 because more, more of the Order 33 milk would be in  
4 Indiana, Ohio -- But, it would be a combination of all  
5 three.

6 Q Okay. What is your average hauling charge to  
7 Foremost members?

8 A I don't know, can't answer that.

9 Q Thirty cents, 40 cents, 50 cents, somewhere  
10 in that range?

11 A It would be less than that. I don't know  
12 what, you know, it would be higher than that in areas,  
13 but, in the Mideast, but in the Midwest, they would be  
14 far less than that. But, if you asked me if they were  
15 seven cents or 14 cents or 20 cents, I can't answer the  
16 question, don't know.

17 Q Okay. If the, assume with me that the  
18 average, statistical average uniform price for Order 30  
19 in 2000 was \$10.57, does that sound about right?

20 A I will take your word for it.

21 Q Okay.

22 A I don't know.

23 Q And if you assume your members had a hauling  
24 charge of at least 10 or 15 cents, you were paying  
25 about a dollar premium year round over the order up in

1 that area?

2 A I would guess that is, you know, correct, a  
3 dollar or something, more than a dollar.

4 Q Okay. And a premium over the Order 32 blend  
5 price the year 2000 as well.

6 A I think you would look at that, we would look  
7 at it and say, over the Order 30 price, which would be  
8 where the biggest volume of milk in Minnesota,  
9 Wisconsin, Northeast Iowa would be pooled. And that is  
10 the way we would weigh it versus Order 30.

11 Q Have you ever looked at a map to see how far  
12 south in Order 32 you would have to go to find a blend  
13 price that would return the same amount you are  
14 returning to your producers in Wisconsin with milk  
15 produced and delivered locally?

16 A Repeat that, will you, Marv, please?

17 Q Do you know how far south you would have to  
18 go in Order 32 or to what order south or east you would  
19 have to go to reach a blend price for the same period  
20 of time that is equal to the price you are paying your  
21 producers for milk delivered locally in Wisconsin?

22 MR. VETNE: Your Honor?

23 JUDGE BAKER: Yes.

24 THE WITNESS: I can't answer.

25 MR. VETNE: I need to pose an objection. I

1 believe the objection requests, although it is  
2 confusing, the comparison of apples to oranges. I  
3 believe the question addressed what is the relationship  
4 of a federal order blend price, not considering  
5 premiums paid producers someplace south, to a  
6 cooperative price that does include premiums someplace  
7 to the north. If I am correct, it is irrelevant. It  
8 is confusing and intended to and will mislead the  
9 record.

10 JUDGE BAKER: Mr. Beshore?

11 MR. BESHORE: The comparison was intended to  
12 be as Mr. Vetne understood it, and I think the  
13 Secretary and his staff, are quite capable of  
14 evaluating the significance of that comparison. And  
15 Mr. Vetne can argue whether it is significant or not in  
16 his brief.

17 JUDGE BAKER: Very well, Mr. Cooper, do you  
18 with to express --

19 MR. COOPER: Well, Mr. Kurth already said he  
20 can't answer, so, I think that solves the problem.

21 JUDGE BAKER: Very well. I am not sure I  
22 quite heard that. Did you say you could not answer it?

23 THE WITNESS: Yes.

24 JUDGE BAKER: Very well. That does the solve  
25 the problem. Thank you.

1 BY MR. BESHORE:

2 Q Okay. Going further down on that same page of  
3 your testimony there, Curt, which I think is the third  
4 page. It is not numbered. You can contend that  
5 Proposals 1 and 5 would reduce net income to your  
6 typical producer members by 20 to 70 percent.

7 A That is correct.

8 Q And you calculated that how?

9 A I calculated by looking at the survey price  
10 and looking at their table, Table 5 on page eight. I  
11 looked at the total allocated costs on producers of,  
12 you know, less than 50 or 50 to 75,000. They were in  
13 the 1070 and 1065 area. I then took our average  
14 producer price of a 1144 and then came up with a net  
15 income for those producers in that hurt size area, and  
16 then went back to my chart and looked at and if we had,  
17 let's just use some 75 cents, if we said that we will  
18 lower the present Order 32 producer, or excuse me, the  
19 present Order 30 producer price differential by 15  
20 cents, my charge going 77 down 62, if a producer had 75  
21 or excuse me, 75 cents per hundred weight revenue, and  
22 you took 15 cents, I took 75 into 15 and got 20  
23 percent.

24 Q Okay. But, so you were just taking, you are  
25 assuming that it was all an Order 30 equation.

1           A     The lower, when I used the 20 percent, I am  
2     assuming at that point it is a producer, who is pooled  
3     on Order 30 to day and will remain pooled on Order 30.

4           Q     Okay.

5           A     And the Order 30 PPD will be forced down by,  
6     based on the assumption of 400 million pounds, moving  
7     to Order 30 from 32.

8           Q     Okay. But, how about the gains, the gain on  
9     Order 32, where did that get factored in there?

10          A     I am sorry. Go ahead.

11          Q     How did you factor in the gain on Order 32  
12     that your Order 32 producers will have?

13          A     That is, the Order 32 producer, itself, that  
14     producer, if is presently pooled on Order 32, and will  
15     remain, would remain on 32, that is not factored in.

16          Q     Okay. And you are paying one pay price up  
17     there.

18          A     That is correct.

19          Q     So, it is all a reblending pay price. So,  
20     your losses were figured on just factoring in the Order  
21     30 losses but not offsetting the Order 32 gains,  
22     correct?

23          A     Yes, the effect on Order 30, right.

24          Q     And you have about the same amount of  
25     production presently on each order.

1           A     We have more in the Midwest, Upper Midwest,  
2 we have more production on Order 30 than we would on 32  
3 and 33 would be a smaller percentage than 32 in the  
4 upper Midwest area, in Wisconsin, Northeast Iowa,  
5 Southeast Minnesota

6           Q     Okay. Can you give us any, any idea of, you  
7 said you haven't maxed out your ability to pool milk in  
8 Order 32, so, your Class I sales are, are substantial.

9           They are long standing and they have been substantial  
10 there and they will continue. Can you, assume they  
11 will continue, can you give us any idea of what volume  
12 of Class I sales to Order 32 facilities you do have?

13          A     I would rather not say.

14          Q     Okay. In any event, assuming that you  
15 continue to have those sales and Proposals 1 and 5  
16 would be adopted, you would be able to pool four or  
17 five times the volume of the Class I sales on Order 32,  
18 at a 20 percent or a 25 percent --

19          A     That would be correct.

20          Q     Okay. And if you are figuring any net gain  
21 or loss, whatever change there was in order increase in  
22 the PPD in Order 32, from present to future, you would  
23 be able to experience that on all of the milk you could  
24 pool on Order 32.

25          A     Yes, it would have an effect on the producer

1 milk that was pooled on Order 32, which if the proposal  
2 was adopted, would be a lesser amount when we talked  
3 the 25 or 30 percent, if we based it on the assumption  
4 that shipments do not change, obviously, the 25 or 30  
5 percent will be a lesser number.

6 Q Okay. Do you know approximately what  
7 percentage of, what percentage of your poolings at  
8 present are delivered to distributing plants for Order  
9 32?

10 A I -- I am not positive, but I would say 14,  
11 15 percent, something like that.

12 Q Do you know that percentage for any of the  
13 other organizations on whose behalf you are testifying?

14 A No.

15 Q Now, on the fourth page of your testimony,  
16 you comment on the Proposal 3 relating to shipping  
17 percentages for supply plants. Isn't it correct, Curt,  
18 as Elvin testified, I think, if I remember correctly,  
19 that old Order 30 and perhaps present Order 30, I am  
20 not sure, has had a higher shipping percentage required  
21 of units than of individual supply plants?

22 A Old Order 30 did it.

23 Q Okay. Now present Order 30 does not?

24 A No.

25 Q Okay. Foremost supported that on old Order

1 30, did it not?

2 A I don't recall. Probably so, but, I don't  
3 recall.

4 Q There are efficiencies that, as you point  
5 out, that can be gained by units of supply plants, by  
6 shipping from units, you agree?

7 A Yes.

8 Q And isn't a higher percentage, a modestly  
9 higher percentage, just a trade off for the, with the  
10 market for the, for efficiency gain allowed there?

11 A No.

12 Q Well, it is a trade off, not a fair trade off  
13 in your view, is that correct?

14 A All right, it is a trade off. I think when  
15 we looked at Order 30 we were looking at five and ten  
16 and six and three, or something, as I recall, which  
17 is --

18 Q Well, that was double.

19 A No, I look at it as a maximum of ten.

20 Q Oh, okay.

21 JUDGE BAKER: Very well. We have come to a  
22 time when we should take our morning recess and then we  
23 will come back. Thank you very much. We will take a  
24 15 minute break.

25 (Whereupon, a short recess was taken.)

1                   JUDGE BAKER: Could we please take our seats  
2 and come to order?

3                   I believe we have some additional questions  
4 for Mr. Kurth. Mr. Beshore?

5                   MR. BESHORE: Thank you, Your Honor. Just a  
6 couple of question, Curt.

7                   BY MR. BESHORE:

8                   Q     Can you tell me what is the southern most  
9 location in Order 32 that you supply, distributing  
10 plants?

11                  A     Oh, Gary can answer this. Onley, Illinois.

12                  Q     Onley, Illinois.

13                  A     Right.

14                  Q     Okay. And the other locations that you supply  
15 would be in Iowa?

16                  A     They would be, well, Anderson, Erickson, Des  
17 Moines and Prairie Farms, other locations at Prairie  
18 Farms.

19                  Q     Okay. So, that there is no question about  
20 this, you may have answered it before, but, is Foremost  
21 Farms pooling milk on Order 32 on its 9(c) report?

22                  A     Yes.

23                  Q     Milk in Minnesota and Wisconsin and Iowa, I  
24 assume.

25                  A     Yes.

1           Q     Is it your observations, Curt, that payments,  
2     payments to producers over the federal order minimums  
3     are higher in Order 30 than in Order 32 generally?

4           A     Yes, I would think so. And if you are  
5     comparing them now to, are these prices compared to the  
6     Order 30 PPD versus compared to the Order 32 PPD?

7           Q     Yes.

8           A     Yes.

9           Q     Okay.

10           MR. BESHORE: Okay. Thank you.

11           JUDGE BAKER: Yes, thank you, Mr. Beshore.

12                           CROSS EXAMINATION

13           BY MR. LEE:

14           Q     Mr. Kurth, Gary Lee with Prairie Farms Dairy.

15           A     I recognize you.

16           Q     Okay. Thank you.

17                           Just a couple of quick questions. You  
18     indicated in your testimony that you maintained  
19     shipping volume to your Order 32 customers, a similar  
20     volume to what you had prior to January of 2000.

21           A     That is correct.

22           Q     Were you given opportunities by either of  
23     those customers to increase shipments? In order words,  
24     did those customers ask if you wanted to ship even more  
25     milk, make more milk available to them than you

1 currently were?

2 A One of them, I think, yes.

3 Q Okay. And did you accept that opportunity?

4 A No.

5 Q And can you answer why?

6 A Well, we had no more milk available under  
7 the, in the locations where we ship milk. We have milk  
8 that is shipped from three different locations to  
9 present Order 32. Those supplies are dried up and -- I  
10 am sorry, go ahead.

11 Q Okay. In other words, all of the milk you  
12 had pooled on Order 32 was being shipped?

13 A No.

14 Q So, there was milk being pooled that was not  
15 being made available to your customers?

16 A That would be true on any order, yes.

17 Q Okay. You were given an opportunity to ship  
18 to a plant in St. Louis and you declined. Can you say  
19 why you declined that opportunity?

20 A Well, not knowing, you know, when we are  
21 talking about, but I assume this fall.

22 Q Within the last three months, four months.

23 A Okay. Well, at that point, we are shipping  
24 and I think we have gone over this what percent we are  
25 shipping to the order versus what we have got pooled,

1 and if we are at a time when milk volumes were at the  
2 bottom, and I assume they were close to that, and the  
3 demand for Class III or Class IV, in our instance,  
4 Class III was high, that we had some obligations to  
5 cheese customers for Class III milk. And, therefore,  
6 and as long as we were exceeding the shipping  
7 requirements, and we took care of that obligation  
8 first.

9 Q Were federal orders designed to serve cheese  
10 customers?

11 A Not designed, but I think that if you looked  
12 at the cost of moving milk to anyone, any order, it  
13 doesn't make any difference if it is 30, 32, 33, that  
14 most people in the upper Midwest and in most other  
15 places, would not be looking at shipping or making  
16 available, let me put it that way, 90 percent or 100  
17 percent of the milk that they have got pooled.

18 Q At any price?

19 A Well, I don't know about at any price. I  
20 would say, yes, at, there are certain times at any  
21 price.

22 Q Okay. Now, it is your feeling that milk that  
23 theoretically might leave Order 32, would all mitigate  
24 back to Order 30. Now, can you envision a scenario,  
25 let's say the parties asking for Proposals 1 through 5

1 got at least part of what they wanted, and the uniform  
2 price in Order 32 improved. Producer milk in Southern  
3 Illinois, Southeast Missouri decided to stay with its  
4 local traditional market or mitigate back to that local  
5 market, can't you envision a scenario where you would  
6 actually have increased opportunities to sell milk to  
7 plants in Order 5 or Order 7?

8 A That we as Foremost would have.

9 Q Yes, you as Foremost. You already have  
10 sales in Order 5.

11 A Yes.

12 Q You can envision a scenario where you would  
13 actually have increased opportunities to sell milk in  
14 Order 5, for example?

15 A Well, it is hard for me to envision it. I  
16 mean, maybe you can. One of the, one of the concerns  
17 that we would have, if, let's just assume that this 400  
18 million pounds moved from Order 32 to Order 30, it will  
19 end up giving me, if I look at the needs that we would  
20 have for Class III milk, it will end up giving me less  
21 milk production by far, I can't tell you whether it is  
22 two percent, four percent or whatever, than we have  
23 now, because of the competition from Order 32 into  
24 Wisconsin and the misalignment of blend prices. So, we  
25 would expect that, at that point we would lose members

1 to others who have all of their milk pooled on 32.

2 Q So, what you and your group are saying then,  
3 you would rather, Prairie Farms and DFA had the  
4 competitive dilemma rather than you and your parties.

5 A Without a doubt.

6 Q Okay.

7 A Or as you said yesterday, so?

8 Q Okay. That is exactly right. The [so] has  
9 been reversed from south to north.

10 A That is right.

11 MR. LEE: Okay. Thank you. That is all.

12 JUDGE BAKER: Thank you. So, Mr. English.

13 CROSS EXAMINATION

14 BY MR. ENGLISH:

15 Q Mr. Kurth, this is Charles English for Suiza  
16 Foods and Anderson Erickson.

17 Your entity is a co-proponent of Proposal  
18 number 8, dealing with milk that is otherwise pooled on  
19 a state wide marketing pool.

20 A That is correct.

21 Q Is your company going to testify about that  
22 proposal separately?

23 A No, I am not, no.

24 Q Does your organization support that proposal  
25 and the testimony that will be given by Mr. Gulden and

1 Mr. Conover with respect to that?

2 A Yes.

3 MR. ENGLISH: Thank you.

4 JUDGE BAKER: Thank you, Mr. English.

5 Are there any other questions of Mr. Kurth?

6 Ms. Brenner?

7 CROSS EXAMINATION

8 BY MS. BRENNER:

9 Q Mr. Kurth, on the first page of your  
10 statement, in the last paragraph, I think I started out  
11 more confused about this than I am right now, but I  
12 still wanted to clarify this.

13 When you say that 55 percent of your sales  
14 were Orders 32 and 50, and 45 percent to Orders 79, are  
15 you talking about the total amount of milk that you are  
16 pooling or that, that you are pooling on the current  
17 Order 32 or are you talking about the total amount that  
18 you are selling to distributing plants on current Order  
19 32?

20 A I am talking about milk moving to  
21 distributing plants. For instance, if we were moving  
22 20 million pounds in August of 1999, 11 million pounds  
23 of that would have gone to 32 and 50 and 9 million  
24 pounds to Order 79. And if you could take it back to  
25 prior to order consolidation, those sales would remain

1 the same, the percentage breakdown.

2 Q Okay. So, you are not saying that 55 percent  
3 of your sales went to, 55 percent of the milk that you  
4 pooled went to distributing plants.

5 A No, no, no.

6 Q Okay. On the last page of text in your  
7 statement. There is a question here, [Why should an  
8 organization with milk in the geographic marketing area  
9 be required to move milk from certain counties in  
10 Minnesota or Wisconsin if they already have enough milk  
11 in the area to satisfy pooling requirements?] I am  
12 not sure what we are looking at that would cause milk  
13 to be required to be moved from Minnesota and  
14 Wisconsin.

15 A I have got to find it here first.

16 (Pause.)

17 BY MS. BRENNER:

18 Q Sir, in the that last paragraph.

19 A Oh, okay. Well, all I am saying is that if an  
20 organization, any organization, has got sales to  
21 satisfy whatever the pooling provisions are, in  
22 whatever market, first of all, what is the difference  
23 where milk is diverted to? But, the second thing is,  
24 what we could have is, let's just say that we had,  
25 someone who had producer milk of five million pounds a

1 month that they were moving directly to market in Order  
2 32. And they had a plant in Minnesota or Wisconsin,  
3 outside of the designated counties that Mr. Hollon had  
4 in his proposal, they had need for that 10 million  
5 pounds for other produce, be it Class III or whatever,  
6 now, you are going to require that plant with 10  
7 million pounds to move two million pounds or 2.5  
8 million pounds to market. It is out of the area, so  
9 they are going to be shipping their 20 percent or 25  
10 percent. Would you agree with that?

11 Q Are you saying they have enough milk in the  
12 area to satisfy the pooling requirements, why would  
13 they have to move milk?

14 A Well, my understanding is that if you are not  
15 in that geographic area defined in yesterday's  
16 testimony, you will be responsible to move as a state  
17 unit, whatever the shipping percentage might be in that  
18 given month.

19 Q Are you talking about in order to pool the  
20 milk?

21 A In order to pool that milk.

22 Q They would have to move.

23 A So, what, in theory, what could happen is if  
24 that plant needs that 10 million pounds, and if the  
25 organization already is shipping five out of 15 or 33

1 percent, are you with me? Okay. So, they are more  
2 than satisfying the, even the new proposed order  
3 requirements. If the plant needs the 10 million  
4 pounds, I guess, you could in an instance be, why then  
5 wouldn't you take the milk that is moving to market,  
6 cut it back by two million, only move three million of  
7 that, haul that two million up to this 10 million pound  
8 plant so you can haul two million pounds back to  
9 market? That is what I am trying to get out.

10 Q Okay. Okay.

11 MS. BRENNER: That is all I have.

12 JUDGE BAKER: Thank you, Ms. Brenner.

13 Are there other questions? Mr. Vetne?

14 MR. VETNE: I have some redirect, if the  
15 others are done.

16 JUDGE BAKER: All right, Mr. Vetne.

17 MR. VETNE: First, Your Honor, as to the  
18 exhibit copy, logistical issue, which we had a little  
19 bit earlier at the end of Mr. Kurth's direct testimony,  
20 the reporter now has three copies of Exhibit 17 and  
21 Exhibit 18. And Exhibit 17 was attached to the  
22 witness's statement, so everybody got a copy of that.  
23 And Exhibit 18, the study that was referred to, has  
24 been assembled and I passed some out and there is a few  
25 more available by my chair here.

1 JUDGE BAKER: Thank you very much, Mr. Vetne.

2 REDIRECT EXAMINATION

3 BY MR. VETNE:

4 Q Mr. Kurth, Marvin Beshore asked you some  
5 questions about Exhibit 17, the table attached to your  
6 testimony and what was factored into and what may not  
7 have been factored into that. Would it be correct to  
8 say that that is simply an illustration of the  
9 regulatory impact of the proposed amendments on the  
10 very small portion of producer gross income that  
11 represents margin or net income?

12 A That is correct.

13 Q Okay. And it did not include, it did not  
14 include inter-cooperative reblending, correct?

15 A It did not.

16 Q It did not. And inter-cooperative reblending  
17 was a question raised yesterday by Mr. Beshore as to  
18 whether it is relative or not to the Secretary's  
19 decision.

20 A That is correct.

21 Q Okay. It also, with respect to, if  
22 reblending is relative and will be considered, it also  
23 did not address for Order 32, if we are going to look  
24 at that, the impact that would result from requiring  
25 shipments not being made. Let me back up.

1           To the extent that there is milk not now  
2 moving to distributing plants and the distributing  
3 plant has the milk it needs to serve Class I and Class  
4 II, whatever it needs, if there is milk not now moving  
5 that will have to move, is it not correct that that  
6 would displace milk that is currently moving to the  
7 distributing plant to make room for this new milk that  
8 it has perform?

9           A     I would assume so, yes.

10          Q     And when that milk is displayed, displaced,  
11 in all likelihood and greater probability, it will move  
12 to a manufacturing use.

13          A     I would think so, yes.

14          Q     So, to some extent the blend price, the Class  
15 I utilization won't go up directly but it would be  
16 diluted or counter balanced a bit by the displaced  
17 milk?

18          A     That would be correct.

19          Q     Okay. And in order to meet the, and that  
20 displacement was not considered, of course, in your  
21 exhibit.

22          A     That is correct.

23          Q     Okay. And in order to meet any one or a  
24 combination of the additional performance requirements  
25 in Proposals 1 through 5 and 7, in Order 32, your

1 organization would incur additional transportation and  
2 logistical costs, correct?

3 A Some, yes.

4 Q Okay. And the diluting impact of those  
5 additional costs on the money you have available to  
6 your dairy farmers was also not factored in.

7 A That is correct.

8 Q Okay. So, going back to, back to the initial  
9 premise, the exhibit is intended to show solely the  
10 regulatory impact on dairy farmers, typical Order 30  
11 dairy farmers, of which yours are some, correct?

12 A That is correct.

13 Q And who are, in fact, all or mostly all,  
14 small business entities subject to protection of the  
15 Regulatory Flexibility Act.

16 A That would be correct.

17 Q And further, should Proposal 7 be adopted, if  
18 within your organization you have a supply of milk  
19 which may efficiently meet distributing plant  
20 requirements, from the whole, but you have to make  
21 certain shipments from a distance location, that would  
22 displace milk that would ordinarily move to  
23 distributing plants from close locations.

24 A That would be correct.

25 Q And I think you talked about that in colloquy

1 with Mr. Beshore.

2 A Right.

3 Q But, again, the milk that is close then, that  
4 is being displaced, would have to move manufacturing,  
5 correct?

6 A Yes.

7 Q And chances are it would, in moving to  
8 manufacturing, the trucks hauling the displaced milk  
9 would go by the trucks hauling the distance milk?

10 A That could happen.

11 Q Okay. And with respect to milk available  
12 when requested, would it be correct to say that you  
13 have, a lot of your milk is marketed based on  
14 commitments, agreements, course of dealing with  
15 customers?

16 A Virtually all of it.

17 Q Virtually all of it.

18 And you have some, some discretionary milk  
19 that is not committed?

20 A Not enough.

21 Q Not enough, right.

22 A Yes.

23 Q Okay. So, in order to meet the temporary  
24 need of a handler on a short term basis that calls at  
25 the beginning of the month or the beginning of a week

1 or the day before, you have to breach your commitment  
2 or understanding to somebody else.

3 A Yes.

4 Q And that is what you meant when you said the  
5 milk is not available because it would involve a breach  
6 of commitment.

7 A Yes, there have been times where we have had  
8 and have made milk available but if we, if we have  
9 other commitments for the milk, that is when we would  
10 say it is not available.

11 MR. VETNE: Thank you.

12 JUDGE BAKER: Thank you, Mr. Vetne.

13 Are there any other questions of Mr. Kurth?  
14 Mr. Cooper?

15 MR. COOPER: I am not sure, but I don't have  
16 17 and 18 as received on my records.

17 JUDGE BAKER: No, they have not been moved.

18 MR. VETNE: I was going to wait to see if  
19 there were any more questions. But, yes, I move the  
20 exhibits.

21 JUDGE BAKER: All right. Are there any  
22 questions or objections with respect to the admission  
23 into evidence of what has been marked for  
24 identification as Exhibit 17 and 18? Let the record  
25 reflect that there is no response. So, 17 and 18 are

1 admitted and received into evidence.

2 (The documents referred to,  
3 having been previously marked  
4 as Exhibit 17 and 18  
5 were received in evidence.)

6 JUDGE BAKER: Apparently there are no further  
7 questions. Thank you very much.

8 (Whereupon, the witness was excused.)

9 Whereupon,

10 GARY GRAN

11 having been first duly sworn, was called as a witness  
12 herein and was examined and testified as follows:

13 DIRECT EXAMINATION

14 BY MR. VETNE:

15 Q Mr. Gran, you have been sworn, sworn in.

16 A Yes, I have.

17 Q And in the first paragraph of your prepared  
18 statement you identify yourself and your affiliation.

19 A Yes.

20 Q Could you in a thumbnail fashion, describe  
21 your professional history in the dairy industry?

22 A I have a degree in Economics from the  
23 University of Wisconsin. And in some quirk of faith, I  
24 was a dairy farmer for 19 years. And I was involved  
25 with our cooperative all that time. I was on the Board

1 of Directors. And due to change in life style, general  
2 manager, assistant general manager job first came  
3 available six and a half years ago, I was hired to that  
4 position. And about a year and a half, a little over a  
5 year ago I became general manager.

6 Q Okay. Could you proceed with your prepared  
7 statement, please?

8 A Thanks.

9 My name is Gary Gran. I am the general  
10 manager Family Dairies USA in Madison, Wisconsin.  
11 Family Dairies USA is a milk marketing and bargaining  
12 cooperative with approximately 5,000 members in eight  
13 states. Family Dairies USA supports Proposals 6, 8 and  
14 9, opposes Proposals 1 and 5, 3 and 7 and is neutral on  
15 Proposals 2 and 4.

16 Family Dairies USA opposes any changes in  
17 Federal Order 32 that are limiting or more restrictive  
18 than the pooling provisions in place at this time.  
19 Milk currently pooled on the Central Order is reforming  
20 and satisfying the pooling provisions specified by the  
21 order as implemented on January 1, 2000 when the  
22 Federal Milk Orders were consolidated from 31 to 11  
23 orders.

24 One of the considerations for consolidation  
25 of Federal Milk Orders was overlapping areas of milk

1 supply. Federal Order 30 and Federal Order 32  
2 currently border in the States of Illinois, Wisconsin,  
3 Iowa, Minnesota and South Dakota. Many of the  
4 processors and handlers have producer milk in the  
5 physical geography of both Order 30 and Order 32.  
6 Consequently it is expected that blend prices in  
7 bordering orders would narrow and begin to obtain  
8 equilibrium. More restrictive pooling will for  
9 producer milk on Federal Order 30 as the market of last  
10 resort. The result will be a lower blend price on  
11 Order 30, while it increases on Order 32. The result  
12 will put handlers and processors pooled on Federal  
13 Order 30 at a competitive disadvantage, not because of  
14 market conditions, but because of Federal Order pricing  
15 between adjoining orders.

16 The ability to pool large amounts of milk  
17 outside the physical boundaries of Order 32 will still  
18 remain, but will be limited to a select few who can  
19 take advantage of milk diversions from the Class I  
20 market. In this scenario, Order 32 handlers will have  
21 the ability to procure from the upper Midwest order  
22 using the Central Order bun price to procure milk from  
23 upper Midwest markets. Order 32 handlers will also  
24 have the ability to continue selling, pooling on the  
25 Central Order, however, will have more value because of

1 the higher blend price.

2 Federal Order Reform was implemented on  
3 January 1, 2000 is working. Milk is reforming and  
4 qualifying as specified by the federal order. A change  
5 to reverse was currently in place would be a backwards  
6 step. It would create more regional pricing and give  
7 selected handlers the ability to use the blend price as  
8 a procurement tool in areas outside the Central Order.

9 Q That concludes your prepared testimony?

10 A Yes.

11 Q Mr. Gran, you indicate you have, your  
12 organization has 5,000 members in eight states. Are  
13 they predominantly located in the States of Wisconsin  
14 and Minnesota?

15 A Predominantly, three fourths of our  
16 membership is in those two states.

17 Q Okay. In those two states, are you aware of  
18 the typical size of your member producers in terms of  
19 number of milking cows for production?

20 A I am not familiar as the number of milking  
21 cows, but our average producer ships about 3,300 pounds  
22 a day.

23 Q Okay. And if we take the per cow per day  
24 production that is reported regularly by USDA on  
25 average and back that in, we could calculate a typical

1 herd size.

2 A Between 50 and 70, I would predict.

3 Q Sorry?

4 A Between 50 and 70 cows I would predict.

5 Q Yes.

6 You have also operated a dairy farm, you  
7 indicated.

8 A Yes.

9 Q And you heard the testimony of Mr. Kurth.

10 A Yes.

11 Q And his reference to the University of  
12 Wisconsin study.

13 A Yes.

14 Q In fact, you provided that study.

15 A Yes, I did.

16 Q It is available on the Internet?

17 A Yes.

18 Q Okay. In your experience as a dairy farmer,  
19 would you agree with the observation made in the study  
20 and made by Mr. Kurth that the margin, the net revenue  
21 to producer represents a very small fraction of the  
22 milk price?

23 A Yes, I would.

24 Q Okay. And would you also agree that the  
25 Proposals 1 through 5, 1, 5 and 7, if adopted, and if

1       successful in forcing the shift of milk out of Order 32  
2       into Order 30, reducing the PPD, would very  
3       significantly affect producers net profit or net  
4       income?

5             A       Yes, I would agree.

6             Q       Okay. And your producers, producer members  
7       are for the most part if not the whole part, small  
8       business entities as defined and which notice was given  
9       subject to protection of the Regulatory Flexibility  
10       Act?

11            A       I think the vast majority of them being upper  
12       90.

13            Q       Okay.

14                    MR. VETNE: Thank you very much.

15                    JUDGE BAKER: Thank you, Mr. Vetne. Are there  
16       other questions? Are there any questions? Yes, Mr.  
17       Beshore?

18                                    CROSS EXAMINATION

19                                    BY MR. BESHORE:

20             Q       Gary, I was looking over the Market  
21       Administrator's Exhibit 5, table 8, which lists pool  
22       handlers on Order 32 and I don't think I saw Family  
23       Dairies USA.

24             A       You did not.

25             Q       Okay.

1           A     I do not pool milk in Order 32.

2           Q     You do not pool milk in Order 32.     You pool  
3 milk on Order 30?

4           A     Yes, we do.

5           Q     Okay. Do you, I think you said in your, maybe  
6 you didn't, since you don't pool milk in Order 32, do  
7 you have members that are pooled on Order 32?

8           A     Yes, we do.

9           Q     Who pools their milk?

10          A     A large number of members ship their milk to  
11 priority plants. And some of those priority plants are  
12 pooled on Order 32, but since they are priority plants,  
13 they don't necessarily reveal that information to me,  
14 but I do see some of their names.

15          Q     Do you, okay, since you don't pool the milk,  
16 then, you are not involved in making any decisions with  
17 respect to the pooling, the marketing of that milk for  
18 pooling purposes?

19          A     That is correct.

20          Q     Okay. Which priority handlers do your members  
21 supply on Order 32? All right, well, let me ask it  
22 this way.

23                    Are there any, are they supplying any Class I  
24 plants on Order 32?

25          A     I would expect they are, but I don't know.

1           Q     Oh, you don't know which plants they are,  
2     your members are supplying on Order 32, is that  
3     correct?

4           A     Well, I know, for example, Wapsie Valley is  
5     one of the plants that we have a significant number of  
6     members in.

7           Q     Okay. Do you agree with the general  
8     proposition that in order to participate in the Federal  
9     Order pool any producer should be required to perform  
10    for the Class I market that makes that pool?

11          A     I believe they should have to follow the  
12    specifications of the order, yes.

13          Q     Do you subscribe to the proposition that the  
14    order specifications should be tailored to meet the  
15    needs of the Class I supply in that marketing area?

16          A     In general, that is the purpose of Federal  
17    Orders I believe.

18          Q     Okay. And you are aware that Order 32 is  
19    here to pool the Class I values of consumers, Class I  
20    values of milk distributed to consumers in Colorado,  
21    Oklahoma, Kansas, Missouri, Nebraska, all those states.  
22    Do you have any members supplying the Class I  
23    facilities in those states?

24          A     I don't believe so, no.

25          Q     Okay. Now you have indicated in your

1 statement that you expect and I assume it means you  
2 want to see a equilibrium of blend prices in the  
3 adjoining area of Order 30 and 32. I take it that,  
4 your testimony to mean you would like to see those  
5 blend prices equal.

6 A Not necessarily equal, but there would be  
7 some economic justification for the difference in  
8 price, such as transportation.

9 Q Okay. Well, do you have the same, do you have  
10 the same view of the relation, what the relationship  
11 between blend prices should be on the border of Order  
12 32 and Order 5? You have heard the testimony that it  
13 is, you know, \$2.00 difference.

14 A Yes, I think pooling provisions in Order 5  
15 should be opened up.

16 Q Perhaps the milk from Minnesota, Wisconsin  
17 that would be manufactured in the cheese up there, is  
18 that it?

19 A We all make economic decisions, yes.

20 Q Okay.

21 MR. BESHORE: Okay. Thank you.

22 JUDGE BAKER: Thank you, Mr. Beshore. Are  
23 there any other questions of Mr. Gran? Ms. Brenner?

24 CROSS EXAMINATION

25 BY MS. BRENNER:

1           Q     Mr. Gran, I was a little puzzled by your  
2 response that you don't know where some of the milk of  
3 your members goes.

4           A     I don't know where it is pooled.

5           Q     You don't know where it is pooled.

6           A     I know which, I know where our members, or  
7 could find out where each of our members ships their  
8 milk, to which priority plant they ship their milk,  
9 but, I am not aware of which Federal Order that private  
10 plant may or not may pool its milk.

11                   MS. BRENNER: I see, thank you.

12                   JUDGE BAKER: Thank you, Ms. Brenner. Yes,  
13 Mr. Lee?

14                                   CROSS EXAMINATION

15                   BY MR. LEE:

16           Q     Mr. Gran, Gary Lee with Prairie Farms.

17                   On your statement, go down to, let's see it  
18 is paragraph one, two, three, four, paragraph four. I  
19 want to see if I am misunderstanding something that you  
20 are saying. The first sentence you are basically  
21 saying more restrictive pooling Order 32 would force  
22 milk to Order 30, theoretically.

23           A     Theoretically.

24           Q     And then further down you say in this  
25 scenario, Order 32 handlers will have the ability to

1 procure milk away from the upper Midwest order.

2 A Yes.

3 Q So, are you saying there that in reality we  
4 could end up with more milk on Order 32 with a better  
5 price? Because on the one hand you saying milk would  
6 be forced back to Order 30, but then you are, in the  
7 very same paragraph, saying that in reality Order 32  
8 may end up with more milk because of a better ability  
9 to attract milk.

10 A It would be the same as what Curt said. We  
11 would lose some producers in the border region, whether  
12 it is two percent, four percent, we don't know, but  
13 because --

14 Q Theoretically.

15 A Theoretically. Because handlers right across  
16 the line in Order 32 would have the ability to pay a  
17 higher price.

18 Q Are you against dairy farmers getting a  
19 higher price?

20 A No, I am not.

21 Q As long as it is yours and not the other guy,  
22 right?

23 A Well, I think there is some, some advantage  
24 to neighbors having roughly the same price.

25 Q But, you are not saying then that Order 32

1 might actually end up with more milk with the ability  
2 to pay, theoretically, have a higher statistical  
3 uniform price?

4 A I have no data on which to base that. They  
5 would end up, because of a higher blend price, I  
6 believe they would be able to procure some more milk.

7 Q Theoretically.

8 A Theoretically.

9 Q Okay.

10 JUDGE BAKER: Thank you, Mr. Lee. Are there  
11 any other questions? There appears to be none. Thank  
12 you very much, Mr. Gran.

13 (Whereupon, the witness was excused.)

14 Whereupon,

15 DENNIS TONAK

16 having been first duly sworn, was called as a witness  
17 herein and was examined and testified as follows:

18 DIRECT EXAMINATION

19 BY MR. VETNE:

20 Q Mr. Tonak.

21 A Yes.

22 Q You have been sworn in?

23 A Yes.

24 Q Do you have a prepared statement?

25 A Yes, I do.

1           Q     You identify yourself in the first paragraph  
2 of the prepared statement and your affiliation.

3           A     That is correct.

4           Q     Could you please give us a thumbnail sketch  
5 of your experience and history in the dairy industry?

6           A     Since I graduated from college with a degree  
7 in Dairy Science back in 1973, I have been employed by  
8 National Farmers Organization, Southern Milk Sales and  
9 now Midwest Dairymen Company in a number of capacities  
10 of the Midwest, Southern States with a broad number of  
11 job responsibilities. That is about as thumbnail as  
12 you are going to get it.

13          Q     All right. And your current responsibilities  
14 are what as manager of Midwest Dairymen?

15          A     Specifically I am involved in the marketing  
16 of the Midwest members' milk, operations of the  
17 cooperative and so on.

18          Q     Okay. Would you please proceed with your  
19 prepared statement?

20               MR. VETNE: I am sorry, before you proceed, I  
21 think it might be logistically better to mark an  
22 exhibit. Your Honor, the witness will refer in his  
23 testimony to a document published by the Cooperative  
24 Extension, University of Illinois, [Summary of Illinois  
25 Farm Business Records for 2000.

1 JUDGE BAKER: Very well. That shall be marked  
2 for identification as Exhibit 19.

3 (The document referred to  
4 was marked for identification  
5 as Exhibit 19.)

6 MR. VETNE: And, Your Honor, I have copies  
7 here, limited copies. The witness specifically will be  
8 referring to just a couple of pages. The full  
9 publication has been marked, but to the extent we run  
10 out of these exhibits, these pages to which referenced  
11 will be made or additional available for those that  
12 don't get a published version.

13 JUDGE BAKER: All right. Thank you, Mr.  
14 Vetne.

15 BY MR. VETNE:

16 Q Okay. If you would go ahead.

17 A My name is Dennis Tonak. I am the manager of  
18 Midwest Dairymen Company. The business address is 4313  
19 West State Street, Rockford, Illinois.

20 Midwest is a relatively small cooperative  
21 with producer members located in Northern Illinois and  
22 Southern Wisconsin. The majority of Midwest members'  
23 milk is used to supply the fluid market.

24 I also work with Lakeshore Federated Dairy  
25 Cooperative, whose members are Manitowoc Milk Producers

1 Cooperative, Manitowoc, Wisconsin, Milwaukee  
2 Cooperative Milk Producers, Brookfield, Wisconsin, and  
3 Midwest Dairymen Company. Lakeshore represents over  
4 4,000 producers located in Wisconsin and surrounding  
5 states. The milk from these producers is primarily  
6 pooled on the upper Midwest order and to a lesser  
7 extent on the Central and Midwest orders.

8 Lakeshore is concerned that the proposed  
9 pooling changes in Proposals 1, 2, 3, 4, 5 and 7 and  
10 more specifically Proposals 1, 3, 5 and 7, if adopted,  
11 could force milk currently pooled on Order 32 to be  
12 pooled on Order 30. This would decrease producer  
13 returns in Northern Illinois and surrounding areas.  
14 Exhibit 19, pages 11 and 12, show the management  
15 returns for dairy farms participating in the Farm  
16 Business, Farm Management Association records for  
17 Northern and Southern Illinois. In 1999 Northern  
18 Illinois farms had a management return of a negative  
19 \$8,420, Southern Illinois farms and management return  
20 of a negative \$825.00. For the year 2000, Northern  
21 Illinois farms had a management return of a negative of  
22 \$36,981.00, Southern Illinois farms management return  
23 of a \$393.00.

24 Federal Order 30 basically encompasses an  
25 area of Northern Illinois, an area in Southern Illinois

1 basically encompassed by Order 32.

2 The impact of Federal Order Reform may have  
3 played a role in the dramatic change in returns for  
4 Northern Illinois farms from 1999 to 2000. To make it  
5 more burdensome to pool milk on surrounding federal  
6 orders would further reduce the  
7 profitability/management returns of these farms and  
8 unduly impact the ability of these small businesses to  
9 survive.

10 There is also an impact on the federal order  
11 dictated costs for Class I milk. On page three, it  
12 shows a comparison of blend prices at Dubuque, Iowa and  
13 Rockford, Illinois since 1998.

14 MR. VETNE: Your Honor, there is an exhibit  
15 attached to, or actually two tables attached to Mr.  
16 Tonak's statement. I think the logistically easiest  
17 thing to do, would be to mark his statement with the  
18 stapled exhibits. I have provided three of the  
19 complete set to the reporter and one to Your Honor and  
20 everybody has a copy.

21 JUDGE BAKER: Very well. Thank you, Mr.  
22 Vetne. That will be marked as Exhibit 20.

23 MR. VETNE: Thank you.

24

25 (The document referred to

1                   was marked for identification  
2                   as Exhibit 20.)

3                   THE WITNESS: Exhibit 20, page 3 shows a  
4                   comparison of blend prices at Dubuque, Iowa and  
5                   Rockford, Illinois since 1998. The Dubuque plant and  
6                   Rockford plant are major competitors for package milk  
7                   sales in Northern Illinois. While the announced Class  
8                   I price is the same at Rockford and Dubuque since  
9                   January 2000, the Rockford plant has a significantly  
10                  higher cost to attract milk supplies from the Stevenson  
11                  County, Illinois, Green County, Wisconsin area, than  
12                  does the Dubuque plant. In effect, to compete for milk  
13                  supplies in that area, or any other area, the Rockford  
14                  plant must pay the Class I price plus the difference in  
15                  Federal order blend prices. As seen on Exhibit 20,  
16                  page four. This puts a greater burden on the Rockford  
17                  plant. During 2001, the actual federal order costs for  
18                  milk at these two plants has become closer than in  
19                  2000. On page four, the term "Effective Class I costs"  
20                  is used to show the representation of the Class I  
21                  differential plus the differences in the Federal Order  
22                  necessary to move milk and other terminology could be  
23                  used as a proxy Class I costs, what the fluid plant  
24                  actually has to pay out in federal order values in  
25                  order to attract milk. Excuse me, Federal order

1 dictated values to attract Class I milk.

2 It appears to us that the producer alignments  
3 within and between Order 30 and 32 are moving to  
4 establish the traditional price relationships that  
5 existed prior to order reform along the northeastern  
6 edges where the two orders adjoin Illinois, Wisconsin  
7 and Iowa. We strongly urge the Department to consider  
8 the impact on the northern Illinois businesses noted  
9 above as it reviews the proposed changes at this  
10 hearing.

11 BY MR. VETNE:

12 Q Mr. Tonak, does that conclude your prepared  
13 statement?

14 A That concludes my prepared testimony.

15 Q And when you referred to the businesses noted  
16 above in the impact, you are referring to the farms  
17 that are members of Midwest and the Lakeshore  
18 Federation?

19 A That is correct, along with the fluid milk  
20 plant at Rockford.

21 Q Okay. You have been present for the  
22 testimony of Curtis Kurth?

23 A Yes.

24 Q And the succeeding witness. Do you have  
25 knowledge of the approximate size of the members of

1 Lakeshore or Midwest in terms of cows or production  
2 performed?

3 A The Midwest members approximate size would be  
4 about 115,000 pounds of milk produced per month. Which  
5 would correlate to approximately 60 to 70 cow herd.

6 Q Okay. And would you agree with the prior  
7 testimony that the margins of producers, that is the  
8 portion of price that is represented as income and  
9 might or might not be reported as net income to the  
10 IRS, is a very, very small portion of the price  
11 received by dairy farmers in this region?

12 A Yes, the margin would be very small and in  
13 some cases the margin may even be a negative figure.

14 Q Okay. Are all your members or nearly all  
15 your members small businesses as defined in the hearing  
16 notice, that is farms having gross income of \$750,000  
17 per year or less?

18 A Yes.

19 Q Okay. The plant in Rockford, can you  
20 identify the name of that plant?

21 A That, the name of that plant is Mueller  
22 Pinehurst Dairy, Inc., an Order 30 distributing plant.

23 Q Okay. And the plant in Dubuque, to which you  
24 are referring or plants?

25 A Would be Swiss Valley Farms, an Order 32

1 distributing plant.

2 MR. VETNE: Okay. Thank you very much.

3 JUDGE BAKER: Thank you, Mr. Vetne. Are there  
4 any additional questions? Yes, Mr. Beshore.

5 MR. BESHORE: Please wait --

6 JUDGE BAKER: All right. Mr. English?

7 CROSS EXAMINATION

8 BY MR. ENGLISH

9 Q Charles English.

10 Mr. Tonak, you are a co proponent for  
11 Proposal 8.

12 A That is correct.

13 Q And are you intending to get back up on the  
14 stand and testified for Proposal 8?

15 A No, I am not.

16 Q Do you vote for Midwest Dairymen and for the  
17 Lakeshore entities support Proposal 8 and the testimony  
18 that will be given by Mr. Gulden and Mr. Conover?

19 A Yes, we do.

20 MR. ENGLISH: Thank you.

21 JUDGE BAKER: Thank you, Mr. English. Are  
22 there other questions of Mr. Tonak? Mr. Beshore.

23 CROSS EXAMINATION

24 BY MR. BESHORE:

25 Q Good morning, Dennis.

1           A     Good morning, Marvin.

2           Q     You do not have any milk pooled on Order 32  
3     at present, is that correct?

4           A     Midwest Dairymen does not have any milk  
5     pooled on Order 32.

6           Q     Do any of the other, do any of the Lakeshore  
7     Federated members have milk pooled on 32?

8           A     Members of Milwaukee and Manitowoc, both have  
9     milk pooled on 32, or the dairy farm members are pooled  
10    on 32.

11          Q     By the cooperative or by another handler?

12          A     By someone else.

13          Q     Okay. Who would that be, do you know?

14          A     I would think that the receipts and  
15    utilization reports for Swiss Valley, and DFA would  
16    identify the majority of that milk.

17          Q     The Manitowoc in Milwaukee milk.

18          A     Yes.

19          Q     Okay. Now, with respect to the producer  
20    income information, you are presenting for the record  
21    here, the Illinois Farm Business Management Analysis  
22    study, this is compiled by what, farmers who elect to  
23    participate in the cost study through the Illinois Farm  
24    Business and Management Association?

25          A     Basically that would be correct. The

1 Illinois Farm Business, Farm Management Association  
2 provides a record keeping format services to aid  
3 farmers throughout the State of Illinois in preparing  
4 financial documentations, records and so on, and this  
5 is a compilation of those records that have the  
6 information that meet the statistical requirements of  
7 Illinois Farm Bureau, Farm Management Association.

8 Q Okay. Are those requirements set out in the  
9 study here somewhere, what it takes to be part of the  
10 cross section or what it takes to be part of the pool,  
11 I guess, cost pool?

12 A They are not specifically set out. There are  
13 some farms that do not provide all the information for  
14 all the categories that may be shown throughout the  
15 publication, so there are farms included in some  
16 portions in the appendixes or in production information  
17 that may not be included in totality of the farm  
18 records on pages 11 and 12. Additionally, pages 11 and  
19 12 show for Northern and Southern Illinois, dairy  
20 farms, there are dairy farms that participate in  
21 Central Illinois, but my understanding is those are a  
22 relatively small number. And were not included in  
23 either these categories, though they are included with  
24 the Northern Illinois dairy farms in other categories.

25 Q Okay. Is there any information in here that

1 tells us where the farms in either of these sectors  
2 marketed their milk during the indicated time periods?

3 A No, there is not.

4 Q Okay. There is nothing that shows where it  
5 was, like for the Southern Illinois farms in recent  
6 years where the milk was pooled?

7 A No, there is not.

8 Q Okay. Now, if you look at Table 8, you have  
9 got the exhibit in front of you there, I think, which I  
10 think is, what, Exhibit 19?

11 A Yes.

12 Q If you look at Table 8, the number, the line  
13 you have quoted from is a line identified as  
14 "Management Return", correct?

15 A That is correct.

16 Q Okay. If you go to the line that says "Net  
17 Farm Income" above that, the numbers are positive  
18 rather than negative, are they not?

19 A That is correct.

20 Q So, that in 2000 the net farm income for  
21 these particular Northern Illinois dairy farms was  
22 \$32,003 on average, correct?

23 A Before the operator had any income for his  
24 labor, his living expenses, and such as that.

25 Q Right. Well, I want to, I want to walk

1 through, you know, briefly, the calculations that were  
2 made to get to the negative bottom line you quoted.  
3 But, it starts with a net farm income after all cash  
4 operating expenses and depreciation, which of course is  
5 a non cash item, after those items are taken out, there  
6 are positive net farm incomes of \$32,000 for 2000,  
7 48,900 for 1999 and a five year average of \$46,370 for  
8 1996 through 2000, correct?

9 A That is correct.

10 Q Okay. And then net farm income per operator,  
11 that is just a line that divides the net farm income by  
12 the number of operators on the farm, I take it.

13 A That would be my understanding. I didn't  
14 prepare this information, so, as we go forward here, I  
15 am a little bit as much in the dark as you are.

16 Q Okay. Well, you know, you quoted that, the  
17 negative line. I am just trying to see how we get to  
18 it there. The next line that shows is the unpaid  
19 labor charge. And I would take that to be just what it  
20 says, it is a figure that is plugged in here that was  
21 not paid for labor, correct?

22 A Yes, my understanding is that is the owner  
23 and family labor charge representation.

24 Q An estimated fair value for the labor of the  
25 owners and operators, which, is that what you

1 understand it to be?

2 A I think it is a proxy for that, yes.

3 Q Okay. A proxy for that. And then the next  
4 line, returns to capital and management, they are for,  
5 you know, good, you know, for good economic reasons  
6 this study is showing that, you know, assuming there  
7 was some return in this business enterprise for capital  
8 and management, it might be the indicated numbers,  
9 correct?

10 A Yes.

11 Q And then again, assuming there was interest  
12 paid on capital invested, there is again, a line  
13 entered, correct?

14 A Yes.

15 Q Okay. And then after all those items are  
16 subtracted from the net farm income, we have the  
17 figures that you quoted in your statement of the  
18 assumed return to management, correct?

19 A That is correct.

20 Q Okay. Let's explore Exhibit 19, your, your  
21 price relationship data a little bit.

22 Now, you are comparing, as I understand it,  
23 the, I am sorry, it is Exhibit 20. Your statement is  
24 Exhibit 20. I may have said 19.

25 You are comparing the statistical uniform

1 prices applicable to Dubuque where there is a Swiss  
2 Valley distributing plant and Rockford, where there is  
3 another distributing plant that is affiliated with your  
4 cooperative, correct?

5 A Yes, our cooperative supplies that  
6 distributing plant with their milk needs.

7 Q Okay. Now, you are not preporting to compare  
8 the actual cost of milk to those plants, are you?

9 A No, I am not saying that that is the actual  
10 cost. I am saying that is a cost, in a round about  
11 way, that is dictated by the Federal Order Regulations.

12

13 Q Well --

14 A In other words, on the, the page three, it  
15 just shows the statistical blend prices at those  
16 locations over a period of almost four years. And also  
17 indicates what the Class I differential at those  
18 locations were during that same time period.

19 Q Okay. Those locations are, what, 90 or 100  
20 miles apart, roughly?

21 A Approximately.

22 Q Okay. From what area do you supply the  
23 Rockford plant, where are your farms located?

24 A It is west Rockford, towards Dubuque.

25 Q Okay. Do you know where the farms are that

1 supply Dubuque?

2 A No, I don't specifically know. I know in the  
3 testimony given by Mr. Hollon yesterday, where he  
4 quoted from the final order, for Order Reform, it  
5 mentions some things about Rockford, Dubuque or some of  
6 these relationship. I also know in there that it  
7 indicates that there is overlap of both package milk  
8 sales and procurement areas, specifically in this  
9 defined geographic area of, or the geographic area that  
10 is encompassed here. Other than that, I don't  
11 specifically know where Swiss Valley receives their  
12 milk supply for that Dubuque from. I do know that  
13 there area number of Swiss Valley farms in that general  
14 area.

15 Q That general area being the --

16 A Northern Illinois, Stevenson County,  
17 Illinois, Green County, Wisconsin, and that surrounding  
18 counties.

19 Q Okay. So, to the extent that Dubuque goes  
20 east and Rockford goes west, there maybe some  
21 overlapping areas in their milk procurement area.

22 A Well, yeah, the farms are intermingled and I  
23 just don't know where the Swiss Valley Farms have their  
24 milk delivered to in all cases.

25 Q Okay.

1 MR. BESHORE: Thank you.

2 JUDGE BAKER: Thank you., Mr. Beshore. Are  
3 there other questions for Mr. Tonak? There appear to  
4 be none. Thank you very much.

5 THE WITNESS: Thank you.

6 (Whereupon, the witness was excused.)

7 JUDGE BAKER: Mr. Vetne, did you want to move  
8 19 and 20 into evidence now or later?

9 MR. VETNE: Now. I rely on Mr. Cooper to  
10 remind me.

11 JUDGE BAKER: Oh, such nice cooperation. Are  
12 there any questions or objection with respect to what  
13 has been marked for identification as Exhibits 19 and  
14 20 being moved into evidence? If there are no such  
15 objections, or questions, Exhibits 19 and 20 are hereby  
16 admitted and received into evidence.

17 (The documents referred to,  
18 having been previously marked  
19 as Exhibit 19 and 20  
20 were received in evidence.)

21 Whereupon,

22 NEIL GULDEN  
23 having been first duly sworn, was called as a witness  
24 herein and was examined and testified as follows:

25 DIRECT EXAMINATION

1 BY MR. VETNE:

2 Q Mr. Gulden.

3 A Yes.

4 Q You have been sworn in, and you have a  
5 prepared statement.

6 A Yes, I do.

7 Q You identify yourself and your employment  
8 position in your first paragraph. Can you please give  
9 us a thumbnail sketch of your experience and expertise  
10 and history in the dairy industry?

11 A I have been employed for Associated Milk  
12 Producers for 31 plus years. And in various positions,  
13 including accounting, management, various management  
14 positions, and currently I am Director of Food  
15 Marketing for Associated Milk Producers.

16 Q What are your responsibilities as Director of  
17 Food Marketing?

18 A Well, Director of Food Marketing has various  
19 hats, but basically to do analysis, economic analysis  
20 for federal orders. I am responsible for paying  
21 producers for the organization, and responsible for  
22 milk movement, analysis of where our milk should be  
23 moved, not only with distributing plants, but with,  
24 between our own facilities.

25 Q Okay. How long have you been director of Food

1 Marketing?

2 A About 20, 22 years.

3 Q So, it is safe to say it is both pre and post  
4 order reform.

5 A Yes. Prehistoric, is what it is.

6 Q Prehistoric order reform.

7 Would you proceed with your prepared  
8 statement, please?

9 A Thank you.

10 I am Neil Gulden, Director of Food Marketing  
11 for Associated Milk Producers. My office address is  
12 315 North Broadway, New Olm, Minnesota 56073. My  
13 testimony is in opposition to Proposal number 3 and I  
14 am joined in that opposition by Foremost Farms, Land O'  
15 Lakes, First District Association, Family Dairies, USA,  
16 Midwest Dairymen Company, Manitowoc Milk Producers  
17 Cooperative and Milwaukee Cooperative Milk Producers.

18 Before units of supply plants were allowed  
19 under Federal Orders, each supply plant had to  
20 individually ship the required order percentage to  
21 distributing plant. In the case of a single handler  
22 with multiple supply plants, this often meant incurring  
23 substantial additional freight, depending on how far  
24 the supply plant was located from the distributing  
25 plant customer. The ability of a single handler

1 operating multiple supply plants to utilize these  
2 plants and ship the same required pounds of milk, as if  
3 they were single plants, from the plant that is located  
4 closest to or possibly more suited for shipping to the  
5 distributing plants, makes real economic sense.  
6 Requiring these single handler units to ship a higher  
7 percentage than individual supply plants would simply  
8 cause the handler to discontinue the unit and ship from  
9 each supply plant. This would cost more freight, but  
10 would not generate any more milk for distributing  
11 plants.

12 Multiple handler units, on the other hand,  
13 have the potential for one handler to substantially to,  
14 with substantially more distributing plants sales than  
15 required, by the order, to pool other handlers and  
16 actually reduce their total combined sales and still  
17 meet order requirements. This along with encouraging  
18 pay to pool situations, we think allow some handlers to  
19 escape entirely any responsibility for supplying the  
20 market.

21 Therefore, we propose as a modification to  
22 Proposal number 3, that systems of supply plants be  
23 operated only, by only one handler, and that the  
24 applicable percentage requirements be the same as a  
25 single plant. This would simply require that the

1 language in 1032.7(f) be changed by eliminating the  
2 words (or more handlers meet) and substituting the  
3 words (handler meets).

4 That concludes my statement.

5 Q Okay. Mr. Gulden, this statement is limited  
6 to Proposal number 3. You have additional statements  
7 with respect to Proposals 8 and 9?

8 A Yes, I do.

9 MR. VETNE: And the principal testimony in  
10 Proposal 8 hasn't been given yet, Your Honor, so, Mr.  
11 Gulden would prefer to wait until after that comes in.

12 JUDGE BAKER: Very well.

13 BY MR. VETNE:

14 Q And with respect to Proposals 1, 5 and 7, you  
15 have been here for the testimony of Mr. Kurth.

16 A Yes.

17 Q And the prior testimony on Proposal 7.

18 A Yes.

19 Q Okay. And Mr. Kurth said he was presenting  
20 the testimony on your behalf as well on behalf of his  
21 organization. The description that Mr. Kurth provided  
22 and subsequent witnesses provided as to typical farmer  
23 members and impact on the net income bottom line, is  
24 that consistent with the experience of your members,  
25 also?

1           A     It is the, yes, the same general principle  
2 would apply.

3           Q     Okay.

4           A     I haven't done the exact numbers, but --

5           Q     Okay. And your member producers are for the  
6 most part, if not the whole part, small business  
7 enterprises as defined in the hearing notice having  
8 gross receipts of income of \$750,000.00 per year or  
9 less?

10          A     For the most part, yes.

11          Q     Okay.

12                   MR. VETNE: Thank you. The witness is  
13 available for cross on this.

14                   JUDGE BAKER: Thank you, Mr. Vetne. Are there  
15 any questions? Apparently there are no, oh, yes, Mr.  
16 Beshore.

17                   MR. BESHORE: Oh, yes.

18                                   CROSS EXAMINATION

19                   BY MR. BESHORE:

20          Q     Good morning, Neil.

21          A     Good morning, Marvin.

22          Q     Exhibit 5, which is a marked Administrator's  
23 information, at Table 8, identifies five associated  
24 milk producers and supply plants under Order 32. Is  
25 that current information, you continue to have five

1 supply plants on the Order?

2 A Yes. That is correct.

3 Q Do you presently report them as a pooled  
4 unit?

5 A Well, they are reported, they are not pooled  
6 on the same report. They are, they are listed as a  
7 unit under Order 32, yes.

8 Q Okay. Are they pooled, is the milk there  
9 pooled under Section 1032.7(e or f), whichever it is?

10 A Yes.

11 Q And is all the milk, is all of your milk that  
12 is pooled on Order 32, pooled through that unit of  
13 supply plants?

14 A Yes.

15 Q Okay. So you are not reporting any, you are  
16 not pooling any milk on Order 32 through your 9(c)  
17 report?

18 A Oh, I am sorry, yes, there are two reports.  
19 It is the seven, seven section and the 9(c) section.  
20 Those two sections.

21 Q Okay. Where is the milk delivered that is  
22 pooled on your 9(c) report?

23 A To distributing plants.

24 Q Solely to distributing plants?

25 A And diverted and diverted to non pool plants.

1           Q     Okay. And what non pool locations is it  
2     diverted to?

3           A     Various, various non pool locations.

4           Q     Can you give us the top three or four?

5           A     Well, those, all of those, all of the supply  
6     plants that you listed in that unit are split plants,  
7     so they have non pool, non pool plant in, a pool plant  
8     on the same premises. So, there are some diversions to  
9     all five of those locations.

10          Q     Are there diversions to non pool  
11     manufacturing plants in the State of Minnesota?

12          A     Yes.

13          Q     What locations?

14          A     Dawson, Minnesota, Painesville, Minnesota,  
15     and Rochester, Minnesota.

16          Q     Okay. Are there any diversions to non pool  
17     plants in the State of Wisconsin?

18          A     Yes.

19          Q     What locations?

20          A     At Jim Falls, Wisconsin and Blair, Wisconsin.

21          Q     Okay. Are those plants in Minnesota and  
22     Wisconsin, are they split plants also?

23          A     Not all of them. Jim Falls, Wisconsin is,  
24     Blair, Wisconsin is, Painesville is.

25          Q     Okay. Now, the diversions on Order 32 are

1 delivered to the non pool side of those split plants, I  
2 assume.

3 A That is correct.

4 Q Okay. Is the pool side of those split plants  
5 associated with any federal order?

6 A Yes, with Order 30.

7 Q Okay. So, Jim Falls, Blair and Painesville  
8 are Order 30 supply plants.

9 A Yes, yes, there is a, the Grade A portion of  
10 those of those plants.

11 Q The Grade A, the Grade A side of the split  
12 plant.

13 A Right.

14 Q Okay. To what locations in Order 32, what  
15 distributing plant customers do you supply on Order 32?

16 A Wells Dairy, at LaMars, and Anderson-Erickson  
17 Dairy in Des Monies, and Prairie Farms at various  
18 locations.

19 Q Okay. Have you ever supplied milk to  
20 distributing plants, since January 1, 2000, to  
21 distributing plants south of those locations in Order  
22 32?

23 A Yes, yes, mainly in the fall, when --

24 Q To what plants?

25 A Again, various plants. I don't have the, I

1 don't have a list of the names, Marvin, but they go  
2 into the southeast. They go into various, various  
3 other areas.

4 Q In Order 32?

5 A Some in Order 32. Some outside of Order 32.

6 Q Okay. What distributing plants in Order 32,  
7 let's just say this fall, have you supplied, other than  
8 the ones mentioned, if any?

9 A None.

10 Q Okay. I ask Curt this morning about what  
11 percentage of Foremost current supply on Order 32 was  
12 delivered to distributing plants and he gave me a rough  
13 estimate. Can you give us the same information for  
14 AMPI?

15 A Percentage of our milk pool on Order 32?

16 Q That is delivered to distributing plants?

17 A I would have to, it would be a guess, but I  
18 would be guessing, on a year round basis, probably in  
19 the 12, 13 percent range.

20 Q Okay. Of AMPI's membership, how many orders  
21 do you pool milk on?

22 A Just two, just Order 30 and 32.

23 Q And what proportion is on Order 30 and what  
24 proportion on Order 32?

25 A Roughly half, half on each.

1           Q     So, when, if you, I think you answered,  
2           responded to Mr. Vetne's question that the economic  
3           effects on your members would be about the same as Curt  
4           had estimated for his. But, you hadn't specifically  
5           done those numbers.

6           A     That is correct.

7           Q     Okay. Is that your testimony?

8           A     That is my testimony.

9           Q     If half the milk is on Order, when you have  
10          done those equations or calculations in your head, have  
11          you factored in the gain that you would have for your  
12          Order 32 milk by the increase in the blend price in  
13          Order 32?

14          A     I, I thought you might ask that.

15          Q     You were a step ahead of me.

16          A     I assume your previous question was relative  
17          to Mr. Vetne's question on margins for dairy farmers,  
18          was that correct?

19          Q     Well, I was assuming, maybe I misunderstood  
20          his question. I thought he was asking whether the net  
21          gains from shifts and pooling or losses that Curt had  
22          estimated on his exhibit, whether you had the same.

23          A     No, I didn't understand Mr. Vetne as asking  
24          that at all.

25          Q     Oh.

1 (Pause.)

2 BY MR. BESHORE:

3 Q Well, let me just ask this question. If  
4 half your milk is on Order 32 and half your milk is on  
5 Order 30, there is a change in blend prices, you are  
6 going to gain on Order 32 and have a loss on Order 30  
7 if it goes down there, correct?

8 A Yes. That is correct. And I did, I didn't  
9 calculate that before I, you know, before the hearing.

10 But, I did scribble it down for. What we are going to  
11 have, Marvin, is we are going to have a lot of milk  
12 that is going to get pushed back to Order 30, okay.  
13 Roughly 70 to 75 percent of our milk. With the  
14 proposals that are here, 70 to 75 percent of the 50  
15 percent that is in, on 32 right now.

16 Q Okay.

17 A Would get pushed back to 30, okay. So, we  
18 are going to, we are going to lose what we have right  
19 now on that advantage on that spread and blend prices.

20 Q Right.

21 A We are going to lose on that 75 percent, we  
22 will lose X amount. On the amount that stays on Order  
23 32, we are going to gain something, according to the  
24 numbers in the exhibits.

25 Q Right.

1           A     And the other 50 percent that is on Order 30,  
2 we are going to lose approximately 15 percent. Net,  
3 net comes out to about 20 cents loss.

4           Q     Okay. Now, say that you are going to, you are  
5 going to lose 70, 75 percent of the milk pooled on  
6 Order 32.

7           A     I am not going to lose it, I am going to --

8           Q     You are going to have it shipped from, back  
9 to Order 30.

10          A     I am going to have to ship it back to Order  
11 30, based on my present sales.

12          Q     Well, if your present sales show 12 to 13  
13 percent delivered to distributing plants, and the  
14 performance requirements under Proposals 1 through 5  
15 are 20 to 25 percent, you have got enough sales there  
16 to qualify slightly more than half of your milk,  
17 wouldn't you agree?

18          A     No, because you go from a qualifying, being  
19 able to qualify 1 in 16.

20          Q     Right.

21          A     Sixteen for every one to being able to  
22 qualify only one pound out of four.

23          Q     But, you testified just a couple of minutes  
24 ago that you have got a year round average about 12 to  
25 13 percent of your pooling is delivered to distributing

1 plants. And if you continued with that volume of  
2 sales, without increasing sales at all, that same  
3 volume of sales, if you have got a 20 percent  
4 performance for several of the months or 25 percent for  
5 other months, you are going to be able to qualify  
6 between 50 and 60 percent without increasing sales at  
7 all, between 50 and 60 percent of your present poolings  
8 on the order. Isn't that arithmetic about right?

9 A Like I said, I did it pretty quickly, but it  
10 sounds, that sounds reasonable to me, Marvin.

11 Q Okay. Okay. And if you were to be, were to  
12 increase sales on Order 32, the amount of milk you  
13 would qualify, be able to qualify, continued pooling  
14 with, would increase proportionally, four loads or so  
15 for every additional sale to distributing plant, if it  
16 was a 25 percent requirement.

17 A If I would sell more milk.

18 Q Yes.

19 A Yes, of course.

20 Q Okay.

21 MR. BESHORE: Okay. Thank you.

22 JUDGE BAKER: Thank you, Mr. Beshore. Are  
23 there other questions? Mr. Vetne?

24 REDIRECT EXAMINATION

25 BY MR. VETNE

1           Q     Mr. Gulden, you are responsible for making  
2           sure that your pooled milk complies with whatever  
3           performance standards there are, is that correct?

4           A     Yes, that is correct.

5           Q     You pass the word onto other folks. Now, if  
6           you have a 25 percent performance standard, when you  
7           consider whether you are going to meet that in a given  
8           month, you have to take into account that sometimes  
9           there are canceled orders?

10          A     Of course.

11          Q     Right. And that sometimes producers put on  
12          cows and sometimes there are weather conditions that  
13          keep you from sending the milk down.

14          A     True.

15          Q     There are a lot of variables there. And the  
16          most important bottom line of which, you don't want the  
17          end of the month to come and find out that although you  
18          planned for 25 percent, you have 24.5.

19          A     No.

20          Q     That would be an enormous cost, wouldn't it?

21          A     You want to watch it very closely and you  
22          want to leave yourself some cushion.

23          Q     Right. So, a 25 percent shipping  
24          requirement, leaving room for the variables and  
25          contingencies of God, weather, the market, and

1 customers, you have to plan on shipping quite a bit  
2 more than the volume represented by 25 percent.

3 A We try to regulate it as close as possible,  
4 but, it naturally ends up being a couple, two, three  
5 percent more than that.

6 Q Okay. And you have customers at more than  
7 one location in Order 32?

8 A Yes.

9 Q And some of those customers can more readily  
10 accommodate supply adjustments than others? Let me  
11 back, let me back up. I was confused by my own  
12 question.

13 Are there some customers that you supply as  
14 not the dominate supplier, not the primary supplier of  
15 milk to that customer?

16 A Yes, that would be true.

17 Q Okay. And when you are not the primary  
18 supplier, would it be also true that when milk is  
19 flushed or when your customer loses a major sale, that  
20 your milk is cut back before the dominant supplier?

21 A Oh, I don't know, for the most, for the most  
22 part, our customers try to treat us fairly uniform  
23 amongst suppliers.

24 Q Try to.

25 A When you get cut back, the most is around

1       holidays and things like that, of course.

2           Q     Okay. Do you also make supplemental sales of  
3       milk on a not committed basis to Order 32 plants?

4           A     Yes.

5           Q     Okay. And those would come in the fall,  
6       primarily, right?

7           A     Yes.

8           Q     Late summer and early, and fall?

9           A     Yes. Toward the end of August and through  
10       mainly October, first part of November.

11          Q     Okay. When you are called upon, keep in mind  
12       the volume of milk that you use as a supplemental  
13       supply, that you provide as a supplemental supply, when  
14       you are called upon to make a supplemental shipment on  
15       occasion in the fall, would it be true to say that the  
16       volume of milk that must be maintained in production,  
17       to have that supplemental load available in the fall,  
18       far exceeds a multiplier of three of the volume of that  
19       shipment? In other words, you have a lot more, you  
20       have a lot more surplus milk associated with a reserve  
21       shipment than you have surplus milk associated with a  
22       regular supply.

23          A     Oh, sure.

24          Q     Sure.

25          A     Sure, absolutely, the manufacturing plants.

1 MR. VETNE: Thanks.

2 JUDGE BAKER: Thank you, Mr. Vetne. Ms.  
3 Brenner?

4 CROSS EXAMINATION

5 BY MS. BRENNER:

6 Q Mr. Gulden, do you currently qualify any milk  
7 for pooling on Order 32 by deliveries to other order  
8 pool distributing plants?

9 A Not intentionally. For the most part, we  
10 maintain our sales on Order 32 to qualify our, the milk  
11 that we have pooled there. In the fall, naturally,  
12 when we have supplemental sales outside of Order 32 and  
13 30, I guess you could say that would be part of pooling  
14 that block of milk, but it wouldn't be needed to pool  
15 that block of milk.

16 Q Well, I noticed you testified that you some  
17 sales from the milk that you pool on 32 to Rochester,  
18 Minnesota. That is not a distributing, a pool  
19 distributing plant under Order 30.

20 A Our plant is not, no.

21 Q It is your plant.

22 A It is our plant.

23 Q Also in your testimony you refer to pool  
24 supply plant systems operated by multiple handlers as  
25 encouraging pay to pool situations. What is a pay to

1 pool situation?

2 A Well, my definition of that would be a  
3 handler who has, let's give an example of 50 percent  
4 Class I utilization on the order, say 50 percent of his  
5 milk goes to Class I. And so, if the order is only  
6 requiring let's say 20 percent to pool, this handler  
7 would have the ability to form a unit with that,  
8 another handler, say even a handler who had very little  
9 sales on the order and he would have enough sales to  
10 qualify both of them.

11 Q And there is some payment involved?

12 A I am assuming that there is an economic  
13 advantage for the handler that doesn't have enough  
14 sales to get his milk pooled on the order, so that  
15 there would be a good possibility that he would, the  
16 handler with the higher utilization might require that  
17 other handler to compensate him for that.

18 Q Are you aware of anything like that happening  
19 in Order 32? Are you involved in anything like that?

20 A No, I am not. We are not as AMPI. But,  
21 well, there are rumors floating around. And I don't  
22 have, you know, it is not written in stone. I don't  
23 have a paper that says that. I don't have a contract  
24 that says that, but, no, I am not aware that  
25 specifically that is happening. But, I am just saying

1 it would lend itself to that very easily.

2 MS. BRENNER: Okay. Thank you.

3 JUDGE BAKER: Thank you, Ms. Brenner. Are  
4 there other questions? There are none. Thank you so  
5 much.

6 (Whereupon, the witness was excused.)

7 Whereupon,

8 BILL DROPIK

9 having been first duly sworn, was called as a witness  
10 herein and was examined and testified as follows:

11 DIRECT EXAMINATION

12 BY MR. VETNE:

13 Q Can you state your full name and affiliation  
14 on the record?

15 A My name is Bill Dropik, I am a dairy farmer  
16 from Central Minnesota. I milk 44 cows. My  
17 affiliation with dairy goes back several years. I  
18 have, have been and currently serve as president of the  
19 Nelson Creamery Association. I have been a board member  
20 of Minnesota Milk Producers for a number of years,  
21 serving in the capacity as the president of the State  
22 Organization which represents approximately 3500  
23 members. Also on the First District Processing Plant,  
24 I serve on that board of directors. I presently serve  
25 as chairman of the Board.

1           Q     Okay. How many years have you been a dairy  
2 farmer?

3           A     I have been a dairy producer for 38 years.

4           Q     Okay. And your milk is pooled where?

5           A     Presently?

6           Q     Yes.

7           A     In Federal Order 30.

8           Q     Okay. And is the milk of First District  
9 Association pooled predominantly or exclusively under  
10 Federal Order 30?

11          A     That is correct.

12          Q     Okay. You have a prepared statement, Mr.  
13 Dropik?

14          A     Yes.

15          Q     You have been solicited as a volunteer to  
16 provide the position of the First District Association?

17          A     That is correct.

18          Q     Okay. Could you read your prepared statement?

19          A     Thank you.

20                   This prepared statement on behalf of the  
21 First District Association members. These are First  
22 District comments. We are submitting this testimony on  
23 behalf of First District Association members located in  
24 Minnesota, Wisconsin, and Iowa.

25                   First District Association and I may refer to

1 this as FDA, that is our abbreviation, several times in  
2 this. First District Association, FDA, which was  
3 founded in 1921 is a dairy farmer owned cooperative  
4 representing over 1300 farm families. FDA is located in  
5 Litchfield, Minnesota and provides shipments of  
6 approximately 36 million pounds of milk annually to an  
7 Order 32 bottling operation.

8 In reference to Proposal number 1, the market  
9 administrator already currently has the authority to  
10 adjust shipping percentages. FDA does not have a  
11 concern with dropping the shipping percentages from 35  
12 percent to 25 percent during the fall months and 25 to  
13 20 percent during all other months of the year, with  
14 the exception that the spring and early summer months  
15 such as April, May, June and July do not normally  
16 require shipping percentages at the proposed levels  
17 because surplus milk is usually very available during  
18 this time of the year to supply the handlers' needs.

19 In reference to Proposal number 5, FDA  
20 disagrees that diversion limits are needed for all  
21 months. Diversion limits should be set at levels to  
22 ensure orderly marketing fluid milk and not function as  
23 a barrier to provide certain organizations with  
24 financial advantage. This will ultimately reduce  
25 competition and result in lower prices for producers in

1 Order 32.

2 In reference to Proposal number 7. It is  
3 ludicrous that each individual state will require a  
4 state unit and each unit must be subject to the same  
5 shipping requirements. FDA does not want to see the  
6 tightening of pooling requirements which establish  
7 unfair boundaries between orders resulting in large  
8 producer price differential between orders. This  
9 proposed change will ultimately destroy the benefits  
10 producers receive with Federal Order Reform that were  
11 anticipated in the final decision.

12 Why would USDA want to impose additional  
13 restrictions until we allow more time for Federal Order  
14 Reform to work and minimize regional disparities.

15 In reference to Proposal number 8, FDA  
16 strongly supports the intent to prohibit the same milk  
17 producers from being pooled on both federal order and  
18 state marketwide pool. Double dipping is unfair and  
19 must stop.

20 First District Association is a cooperative  
21 focused on maximizing returns to its dairy farmer  
22 members. Competition is healthy and producers will win  
23 as long as competition exists. Eliminate the  
24 competition by creating more regulations will result in  
25 federal order policy that creates a self interest,

1 manipulated system that will ultimately result in less  
2 fair, in a less fair system for all dairy farmers  
3 throughout the United States.

4 This testimony is signed by the management  
5 and the full board of the directors, First District  
6 Association.

7 Q Mr. Dropik, Mr. Kurth earlier gave some  
8 testimony. Were you here to hear it?

9 A Yes.

10 Q Okay. And Mr. Kurth explained some impact on  
11 the bottom line, that is the margin or net revenue of  
12 dairy farms. As a percentage of that net revenue, if  
13 the Proposals 1 through 5 and 7, were as intended to  
14 cause a large volume of milk to ship to Order 30,  
15 depressing the PPD. I want to ask you some questions  
16 about that.

17 First of all, the Regulatory Flexibility Act  
18 of which notice was given in the notice of hearing,  
19 defines a dairy farmer, a small business enterprise, as  
20 a farm with less than \$750,000.00 of gross income per  
21 year. Does your farm qualify for that?

22 A Absolutely.

23 Q Yes. And would that be the same, would the  
24 same be true of most of, if not all, of First District  
25 farmers that you are here representing?

1           A     Yes, it would.

2           Q     Okay. And with respect to the, the margins  
3 left over after costs, which are described in the cost  
4 of production exhibits, is that also fairly  
5 representative of your farms and the farms with which  
6 you are familiar?

7           A     Yes, it is. I think those surveys are quite  
8 accurate, yes.

9           Q     Okay. And a reduction in net income to your  
10 farm of 15 or 20 percent of the PPD, would have serious  
11 adverse effect on your business, is that correct?

12          A     Absolutely, yes.

13                   MR. VETNE: Okay. Thank you. The witness is  
14 available.

15                   JUDGE BAKER: Thank you. Are there any  
16 questions? Yes, Mr. Beshore.

17                   MR. BESHORE: Just a couple of questions, Mr.  
18 Dropik.

19                                   CROSS EXAMINATION

20                                   BY MR. BESHORE:

21           Q     The 1300, does First District have both Grade  
22 A and Grade B dairy farmer members?

23           A     Yes, we do.

24           Q     About what portion of the 1300 farms are  
25 Grade A and what portion Grade B?

1           A     I do not know the exact but I would probably  
2 venture to say at least 90 percent of them are Grade A.

3           Q     Grade A. So you may have 100 or 200 Grade B  
4 farms left.

5           A     Somewhere in there, yes.

6           Q     What, do you know how many of, or what  
7 portion of your membership is pooled on Order 32 versus  
8 Order 30 at the present time?

9           A     I don't know the percentage, but it is, was  
10 the question number of members?

11          Q     Number of members or percentage, whatever you  
12 might be able to --

13          A     I cannot answer that accurately. I know we  
14 have members pooled in Order 32 and the majority of  
15 them in Order 30.

16          Q     Okay. Do you know the mechanisms that you are  
17 utilizing in associating milk or pooling milk on Order  
18 32?

19          A     I probably know about enough to be dangerous  
20 with it. I accept my responsibility as board chairman  
21 to higher management and the proper people that  
22 specialize in that and know that. So, that is, those  
23 are the people that make those decisions.

24          Q     Okay. You have one bottling customer in  
25 Order 32, I take it, from your testimony, is that

1 correct?

2 A Yes, we do.

3 Q Okay. When you, your comments with respect  
4 to Proposal number 1, do I, are you indicating that  
5 First District is agreeable to a 25 percent fall months  
6 and 20 percent spring month, shipping requirement?

7 A I believe what we are saying there is, again,  
8 it is self explanatory, the market administrator  
9 currently has that authority to change that and that  
10 is, that is what we support.

11 Q You support just keeping it the way it is, I  
12 take it.

13 A Yes.

14 Q Okay. Do you know whether, do you have  
15 members in Iowa as well as in Minnesota and Wisconsin?

16 A Yes, we do.

17 Q Do you know whether, do you deliver all the  
18 milk to the Order 32 customer from the members in Iowa?

19 A I believe we do, yes, we do.

20 Q Okay. Do those, do you pool members who are  
21 located in Minnesota and Wisconsin on Order 32 by  
22 virtue of those deliveries from the Iowa farms, to the  
23 best of your knowledge?

24 A Again, I am not the first that calculates all  
25 of that. I believe some of it is, but I cannot give

1 you a definite on that.

2 Q Okay.

3 MR. BESHORE: Thank you.

4 JUDGE BAKER: Thank you, Mr. Beshore. Are  
5 there others questions? Let the record reflect that  
6 there are none, thank you very much.

7 THE WITNESS: Your Honor, if I could just make  
8 one plea to the USDA officials here and --

9 JUDGE BAKER: They are sitting right there.

10 THE WITNESS: Yes, I know.

11 JUDGE BAKER: You can just --

12 THE WITNESS: I want to direct it at them. We  
13 have recently went through Federal Order Reform and a  
14 comment that I have, I probably use this comment quite  
15 frequently, but, you know, some people will argue  
16 things that are right, some people will argue things  
17 that are wrong. But, it is very hard to argue against  
18 things that are fair. And I also serve on a national  
19 milk producer board of directors and I think that is  
20 one thing we are trying to bring more unity into dairy  
21 farmers across the nation. And if we can end up and  
22 work with issues that are fair, I think that is what I  
23 am asking USDA.

24 JUDGE BAKER: Thank you.

25 THE WITNESS: Thank you.

1 JUDGE BAKER: Thank you for your concern and  
2 your testimony.

3 (Whereupon, the witness was excused.)

4 JUDGE BAKER: Mr. Vetne?

5 MR. VETNE: I don't know where we are with  
6 respect to, with respect to lunch.

7 JUDGE BAKER: Well, we have time for one more  
8 witness, if there is --

9 MR. VETNE: Okay. We have Mr. Hahn, who is  
10 willing to give a partial statement on Proposals 1  
11 through 5.

12 Whereupon,

13 JAMES E. HAHN

14 having been first duly sworn, was called as a witness  
15 herein and was examined and testified as follows:

16 DIRECT EXAMINATION

17 BY MR. VETNE

18 Q Mr. Hahn, you have been sworn?

19 A Yes.

20 Q You have a prepared statement?

21 A Yes, I do.

22 Q Could you please identify yourself and state  
23 your full name, your affiliation and your experience  
24 and history in the dairy industry?

25 A My name is James E. Hahn. I am the Director

1 of Membership and Procurement for Land O' Lakes, Inc.  
2 I have been employed at Land O' Lakes since July of  
3 2000. Prior to that I was employed by USDA in the  
4 Federal Milk Market Administrator's Office for Chicago  
5 Region and Indiana, Federal Order 30 and 49, since  
6 1972, through June of 2000.

7 The last 10 years I was the assistant market  
8 administrator for seven years and the acting market  
9 administrator for the last three years.

10 Q Thank you, Mr. Hahn.

11 Your prepared statement is divided into two  
12 parts. It addresses in the first part Proposals 1, 3,  
13 5 and 7. And in a second part Proposal 8.

14 A That is correct.

15 MR. VETNE: Okay. With Your Honor's  
16 permission, I would like to ask Mr. Hahn at this time  
17 to present his testimony through the issues of one,  
18 three, five and seven and reserve testimony on Proposal  
19 8 until proponents' testimony has been given.

20 JUDGE BAKER: Very well. Thank you.

21 BY MR. BESHORE:

22 Q Would you proceed, Mr. Hahn?

23 A Yes.

24 Land O' Lakes, Inc. continues to support the  
25 Federal Order Program that promotes that concept of

1 efficient and orderly marketing. LOL also believes  
2 pooling should be based on performance and is not in  
3 favor of restricting access to pooling to benefit a  
4 select few. Fewer restrictions provide for market  
5 efficiencies resulting in the least cost to serving the  
6 fluid market. The USDA is to be commended in the  
7 adoption of the Class I pricing surface, as a result of  
8 Federal Order Reform. This one change has allowed for  
9 far more liberalized pooling, which is a means of  
10 gaining access to Class I proceeds on a wider basis.  
11 But, access can only be gained through performance.  
12 Participants must be willing to serve the market or in  
13 other words, to perform.

14           The net impact of Federal Order Reform has  
15 been positive for all producers. Class I utilization  
16 in the upper Midwest market has increased from 14 and  
17 half percent in January 2000 to 21 and 3/4 percent in  
18 August 2001. This evolutionary process benefits local  
19 producers whose milk is pooled on other orders as well  
20 as producers whose milk remains pooled on Order 30.

21           Likewise, producers in all markets have  
22 benefitted from the impact of the revised Class I  
23 mover. The Class I differential is attracting milk as  
24 it was designed to do. Producer milk is flowing more  
25 readily into deficient markets. In fact, this is one

1 situation alluded to be Petitioners favoring tightening  
2 of diversion limits in the Central Order earlier this  
3 year. It was suggested that reducing producer milk  
4 volumes by revising diversion limits from 75 percent to  
5 60 percent would address the disparity between Order 32  
6 and Orders 5 and 7. My analysis indicated an increase  
7 of 35 cents and the statistical uniform price would be  
8 likely. However, this would still not, I am sorry,  
9 however, this would still be a \$1.48 less than the  
10 Order 7 price at St. Louis. The producer price  
11 increase of 35 cents would not be sufficient to attract  
12 and retain milk in areas where producers have the  
13 option of marketing milk to either Order 5 or 7.

14 One of the objectives of the order program is  
15 attract milk for fluid use. The laws of economics  
16 dictate the federal order pools will equilibrium.  
17 Market wide pools will attract milk to the point where  
18 transportation exceeds marginal value. The current  
19 provisions provide for orderly marketing.

20 The majority of Land O' Lakes members, whose  
21 milk is pooled on Order 32 are subject to the  
22 Regulatory Flexibility Act and that the average monthly  
23 production is 215,758 pounds. According to a  
24 publication titled "Milk Production Costs in 2000 on  
25 Selected Wisconsin Dairy Farms", the net farm income

1 for these members average a dollar per hundred for milk  
2 sales at the rate of 11.65. The average difference  
3 between the Central and Upper Midwest order PPDs at  
4 location for 2000 is 53 cents. Representing 53 percent  
5 of the profitability for milk sales should members be  
6 restricted from pooling milk to trade barriers.

7 Land O' Lakes is imposed to Proposals number  
8 1, 3, 5 and 7 for the following reasons: Taken  
9 collectively, these proposals would limit the volume of  
10 milk which can be associated with the Central Order, in  
11 other words, restrictive pooling and create  
12 unreasonable restrictions with regard to milk produced  
13 in areas outside the marketing area relative to milk  
14 produced within. It is LOL's contention that milk  
15 should be pooled based on performance without regard to  
16 location or zip code.

17 From all indications the needs of the fluid  
18 market are being met. It is true that premium  
19 structure exists in serving this market, however, an  
20 adequate supply of milk is being made available to meet  
21 the Class I demand. Current order provisions provide  
22 the market administrator the latitude to adjust  
23 shipping percentages should warrant, I am sorry, should  
24 conditions warrant. I am not aware of any requests to  
25 increase shipping percentages. Additionally, the

1 market administrator has not revised shipping  
2 percentages.

3 I can only assume the intent of proponents is  
4 to restrict access to pooling. The consequence of  
5 adopting these proposals is to create inefficient and  
6 uneconomic handling of milk. There is not  
7 justification to require supply plants located outside  
8 the marketing area, to receive milk and transfer to  
9 distributing plants. Such a practice adds costs and  
10 degrades milk quality due to additional handling.

11 The philosophy of the order program has  
12 provided that all Grade A milk will be eligible to be  
13 pooled. History documents and order provisions have  
14 been consistently relaxed to accommodate this concept.

15 If barriers to trade are created through the adoption  
16 of these proposals, the Grade A milk will be forced to  
17 be pool in a joining order such as the Upper Midwest  
18 and Western order, which are already carrying a  
19 disproportion volume of reserves. Producers are  
20 willing to perform by shipping milk to meet the Class I  
21 demands of deficient markets. The Reform Class I price  
22 surface accommodates this phenomenon. Economics will  
23 provide the appropriate pricing signals. The Federal  
24 Order Program should not create barriers to restrict  
25 the natural incent of the shipped milk given a new

1 price surface.

2 Utilization will tend to come together as the  
3 needs of the various orders are met based on  
4 performance provisions. Milk of producers should  
5 continue to be allowed to move freely to meet market  
6 conditions.

7 This concludes my statement relating to  
8 Proposals 1, 3, 5 and 7.

9 JUDGE BAKER: Mr. Vetne, that does bring us to  
10 a time for our luncheon recess. As you know we are  
11 accommodating the hotel with respect to that.

12 MR. VETNE: Yes. I have been requested to ask  
13 Your Honor to get a sense of where we are going after  
14 lunch and so people can make their travel arrangements  
15 or change plans as necessary.

16 JUDGE BAKER: Very well. Well, I have no  
17 inside knowledge, so to speak, so we simply have to  
18 canvas everyone here.

19 How many more are there to testify? Mr.  
20 English?

21 MR. ENGLISH: Well, after calling the logical,  
22 I think would be Proposal 8. And that would be two  
23 witnesses, plus some documentary evidence, which I  
24 think the parties have all agreed as just going to go  
25 in as documentary evidence.

1 JUDGE BAKER: All right.

2 MR. ENGLISH: And so, and then, I guess there  
3 is Proposal 9, which is also on the pooling issue.

4 JUDGE BAKER: And Proposal 6, this gentleman.

5 MR. ENGLISH: That is a separate issue.

6 JUDGE BAKER: As nearly as I can tell, Mr.  
7 Vetne, that is it. Unless someone wants to --

8 MR. VETNE: About five people.

9 MR. BESHORE: There is, there is one other.  
10 Mr. Hollon, of course, is going to come back. Proposal  
11 6, and also testimony on the emergency, need for  
12 emergency action.

13 JUDGE BAKER: Right.

14 MR. BESHORE: There is one other witness who  
15 has, is here today, who would we would like to call a  
16 brief witness and wasn't available earlier.

17 JUDGE BAKER: Very well. We will seek to  
18 that, then. That is the most informative I can get,  
19 Mr. Vetne.

20 MR. VETNE: Thank you.

21 JUDGE BAKER: We will take an hour for our  
22 afternoon recess, luncheon recess.

23 (Whereupon, at 12:15 p.m., the hearing was  
24 recessed, to reconvene at 1:15 p.m., this same day,  
25 Thursday, November 15, 2001.)

26

1                   A F T E R N O O N   S E S S I O N

2                                   1:23 P.M.

3                   JUDGE BAKER: On the record.

4                   Mr. Cooper?

5                   MR. COOPER: Your Honor, for those who haven't  
6 yet heard, the hearing notice has been signed and will  
7 be published probably tomorrow in the Federal Register  
8 for a similar type hearing to this in the Pacific  
9 Northwest Marketing Area to be held in Seattle on  
10 December 4 and 5.

11                  JUDGE BAKER: Thank you very much, Mr. Cooper.

12                  MR. COOPER: And I don't have copies of it  
13 here. This is for Mr. Vetne. And he can call these  
14 producers one by one.

15                  JUDGE BAKER: Very well. We are back in order  
16 after our luncheon recess. And Mr. Vetne, have you  
17 completed his direct testimony?

18                  MR. VETNE: Yes.

19                  JUDGE BAKER: You have. Fine. Are there any  
20 questions? Mr. Beshore.

21                                   CROSS EXAMINATION

22                  BY MR. BESHORE:

23                  Q     Just a couple of questions on this, Jim.

24                                 I have noticed in your statement that you  
25 have endorsed the concept of performance with respect

1 to pooling and a quick count showed you using the word  
2 performance or performed, you know, at least five times  
3 or so. So, I assume that is an important concept for  
4 the Land O' Lakes espouses with respect to these  
5 federal proposals you have testified in Minneapolis,  
6 correct?

7 A That is correct.

8 Q Okay. Is it your position that the present  
9 provisions, pooling provisions of Order 32 are  
10 appropriate performance requirements for pooling in  
11 this order?

12 A In my opinion the current order provisions  
13 provide incentive to move milk to the distributing  
14 plants and as I indicated in my direct testimony, I  
15 believe that the distributing plants are being  
16 adequately serviced to meet the demands of the fluid  
17 market. So, yes, I believe they are adequate.

18 Q Okay. How do you, in your use of being  
19 adequately served, how do you evaluate that? How do you  
20 determine that?

21 A First of all, to the best of my knowledge  
22 there hasn't been any requests for increase in shipping  
23 percentages. Secondly, the market administrator hasn't  
24 increased shipping percentages. Thirdly, I believe we  
25 have delivered all the milk that we have been asked to

1 deliver to our regular customers on a timely basis.  
2 And so, from my perspective, the distributing plants  
3 are being adequately served. We have significantly  
4 shortened up our manufacturing operations this year to  
5 deliver additional supplies of milk, when asked.

6 Q If a market, if the distributing plants in a  
7 market are, which has a utilization in the range that  
8 this market does of, you know, 20, 26 percent, the  
9 distributing plants are not able to attract milk from  
10 within that is pooled under that order, would they be  
11 adequately served in your view?

12 A I am sorry, what was the question?

13 Q If a distributing plant in Order 32, or the  
14 25 percent utilization market, is not able to obtain  
15 milk from within that order to meet its needs, are the  
16 requirements for pooling in that order serving that  
17 market?

18 A Yes, I think they are, Marv. The issue that  
19 we run into is the definition of the order and the  
20 marketing area. And I believe in the final decision,  
21 there were seven criteria that were related to, that  
22 USDA used to evaluate the formation of the new markets,  
23 the reform order, based on the reformed order. Well,  
24 obviously not all seven of those criteria are going to  
25 define the same marketing area. And obviously the

1 marketing area as defined by the sales area, the  
2 overlap of Class I route sales, probably carries a  
3 predominance of where, of what constitutes that  
4 marketing area in terms of competition between Class I  
5 handlers. And obviously you are going to have, in one  
6 of other criterion is procurement area and overlapping  
7 procurement area, etc., etc. Well, seldom are those  
8 two criteria going to point to the same geographic  
9 area, I believe. And so, I think it is certainly  
10 appropriate that Federal Order Milk cross order  
11 boundaries in order to serve distributing plants in  
12 adjoining areas.

13 Q Okay. But, shouldn't distributing plants at a  
14 market with 25 percent utilization be able to draw on  
15 the milk pool in that order to be able to attract milk  
16 that is pooled in that order to meet their needs?

17 A Well I would expect that some of the milk  
18 that is produced in that procurement area is serving  
19 that need. But, certainly the milk that is adjacent to  
20 that area should have the opportunity serve that same  
21 need as well.

22 Q Okay. I am not talking about, I am talking  
23 about milk pooled under the order. Shouldn't that be,  
24 shouldn't there be enough milk in that pool to serve  
25 the distributing plants if the performance requirements

1 are right, if you have got 25 percent utilization?

2 A I don't agree that, I don't agree that the  
3 milk from within the definition of the marketing area  
4 should be the only milk that is destined to perform for  
5 the Class I handlers. I mean, milk in and around, you  
6 know, the marketing area should have the opportunity to  
7 meet the performance requirements of the order.

8 Q Okay. Wherever located, if you have got a  
9 milk, if you have got a pool that has got 25 percent  
10 utilization, regardless of where the milk that is  
11 pooled there is located, shouldn't that and if the  
12 performance requirements for order are right, shouldn't  
13 the milk required for that 25 percent Class I  
14 utilization be available from the milk that is pooled  
15 on the order?

16 A No, obviously, no, each handler's requirement  
17 would be the 25 percent. And I think where we run  
18 into, we run into a little bit of a fallacy with the 25  
19 percent is, the direct shipped milk in a distributing  
20 plant. The issue that you have is supply plant milk  
21 and spot shipments of milk. And the ability to pool  
22 based on a 25 percent requirement, probably would  
23 create a situation where the handlers that are  
24 currently supplying the market wouldn't have the  
25 incentive to ship that milk, where they are limited,

1 where they are limited to qualify on a basis of five  
2 pounds per one pound of shipment or four pounds per one  
3 load of shipment, based on the 20 percent or 25 percent  
4 shipping criterion.

5 Q So, you don't think that would, you don't  
6 think that would make enough milk available for the  
7 market's Class I needs?

8 A I think it, I think it would make a  
9 difference in the incentive to ship milk to the fluid  
10 market.

11 Q Okay. What incentive is there for the present  
12 performance requirements to ship milk from a distant  
13 state such as Idaho or California to the Order 32 Class  
14 I handlers?

15 A The shipping requirement pertains to handlers  
16 under the order. And the handler has the obligation to  
17 perform at least the minimum level or greater in order  
18 to pool milk. And the handler has the obligation to  
19 deliver whatever the shipping requirement is as a  
20 minimum to the distributing plants in the order, in  
21 order to qualify the volume of milk that the handlers  
22 are qualifying. Obviously, if the, if the handler is  
23 limited in terms of access to only milk, which is  
24 substantially further away from the market, he is going  
25 to have to deliver that at a higher cost and so his

1 incentive is going to be less.

2 Q Okay. On your second page of your testimony,  
3 you talk about Upper Midwest, and West, already  
4 carrying a disproportion of volume of reserves. Do I  
5 understand correctly, you are talking about basically  
6 reserves viewed on a national basis?

7 A No, I believe I am referring to the reserves  
8 that each of those orders are carrying distinct to each  
9 of those two orders.

10 Q But, disproportionate volume of reserves,  
11 disproportion, if the reserves aren't reserves for  
12 those orders, where are they, where should they be  
13 pooled? If the disproportionate they have got a lower,  
14 basically you are saying they have got a lower  
15 utilization than they ought to have. Disproportionally  
16 low, correct?

17 A That is correct.

18 Q Okay. So, the only, isn't your barometer  
19 there, or your measurement basically national  
20 utilizations?

21 A What I am referring to is that with the Class  
22 I utilization of 15 to 20 percent range in the Upper  
23 Midwest order, with that utilization, bordering on  
24 another federal order such as the Central Order with 30  
25 to 40 percent utilization and the Mideast order with 40

1 to 50 percent utilization, it creates some pretty  
2 disorderly marketing in terms of misalignment of blend  
3 prices and the opportunity for the higher utilization  
4 orders to cherry pick producers due to the higher blend  
5 prices. And Land O' Lakes is in favor of those  
6 utilizations equilibrating to a certain degree. We  
7 believe that 15 percent utilization in the Upper  
8 Midwest order or in the Western order, is much more  
9 reserve than those orders should be intended to carry  
10 relative to the national, the national Class I  
11 utilization of 37 percent.

12 MR. BESHORE: Okay. Thank you.

13 JUDGE BAKER: Thank you, Mr. Beshore. Are  
14 there other questions? Apparently there are none.

15 Thank you so much.

16 THE WITNESS: You are welcome.

17 (Whereupon, the witness was excused.)

18 JUDGE BAKER: I was going to say Mr. Vetne  
19 agreed, Mr. Beshore, that you could have a witness at  
20 this point. Is that correct?

21 MR. BESHORE: Actually, Mr. Vetne said he was  
22 through and so, he didn't have anything to say about  
23 it.

24 JUDGE BAKER: Oh.

25 MR. BESHORE: But, Mr. English has agreed that

1 I can.

2 JUDGE BAKER: Oh, all right, fine.

3 MR. BESHORE: I call Mr. Mueller.

4 Whereupon,

5 TIM MUELLER

6 having been first duly sworn, was called as a witness  
7 herein and was examined and testified as follows:

8 DIRECT EXAMINATION

9 BY MR. BESHORE:

10 Q If you would state your name and spell it,  
11 please?

12 A Tim Mueller, M-U-E-L-L-E-R.

13 Q Okay. Who are you employed by, Mr. Mueller?

14 A Mid States Dairy.

15 Q What is Mid States Dairy, where is it  
16 located?

17 A Mid States Dairy is a fluid plant located in  
18 St. Louis, Missouri. It is vertically integrated dairy  
19 plant.

20 Q Is it a fluid distributing plant on Order 32?

21 A Yes.

22 Q Okay. Has Mid West States been able to  
23 acquire all milk needed for its Class I uses from Order  
24 32?

25 A At a price.

1           Q     Okay.  Have you had to go outside the order  
2     to the south to acquire milk that you needed?

3           A     Yes.  We had to pay charges in the south,  
4     pretty close to what Mr. Lee was talking about.

5           Q     Can you tell us where you had to go, what the  
6     circumstances were that led you to that, to those  
7     sources and what the sources were?

8           A     Since Federal Order Reform, our milk sheds  
9     used to be the Southern Missouri area, that is now part  
10    of Federal Order 7, and the Central Illinois area.  
11    Since Federal Order Reform has happened, Southern  
12    Missouri is really not even supplying for us anymore.  
13    The one price just prohibits us from buying milk there.

14    And the milk that is over in Central Illinois is now  
15    going down to Kentucky, Tennessee, just because of the  
16    higher paid prices down there.  So, there really isn't  
17    a place for us to go get milk anymore.  The milk that  
18    we had, and this just happened as of October 1, milk  
19    that we had coming from the south, has been cut off.  
20    We were told that, first of all, they were going to  
21    raise our price, which we are agree to and then they  
22    said we don't have enough to supply your needs.

23          Q     Okay.  Have you attempted to replace the milk  
24    from Missouri and Illinois with milk supplies in Iowa  
25    and Minnesota and Wisconsin?

1           A     We have attempted to contact people who are  
2 interested in selling us milk on a year round basis.

3           Q     Have you been successful in lining up  
4 supplies from those, to pool sources?

5           A     Not at this point in time.

6           Q     The milk that you were receiving from the  
7 south, what states did that originate, state or states  
8 did that originate out of?

9           A     I believe most of it was from Arkansas,  
10 Oklahoma.

11          Q     Arkansas, Oklahoma.

12          A     Some of them may have been Texas.

13          Q     Okay. And what period of time had you been --  
14 those milk supplies?

15          A     It started last January and it increased as  
16 of July 1.

17          Q     Okay. Was your first option for supplying  
18 milk for your plant, source option to go those  
19 distances?

20          A     In January it was more of an opportunity,  
21 milk was a pre-interesting cost to us. But, we knew  
22 that it was a short term option for us, would get us at  
23 least to the next point where we had June, and we had  
24 to try to contact the milk.

25          Q     And were you able to contract the milk from,

1 on the Order 32 area at that time?

2 A No, we were not.

3 Q Okay. Did you, since you weren't able to  
4 contract from the Order 32, did you contract until  
5 recently with the southern milk sources?

6 A Yes, we did.

7 Q Okay.

8 A At an extreme premium.

9 Q The milk continued to come out of Arkansas,  
10 Oklahoma and possibly Texas.

11 A Yes, sir.

12 Q Okay.

13 MR. BESHORE: Okay. That is all I have.

14 JUDGE BAKER: Thank you, Mr. Beshore. Are  
15 there any other questions of Mr. Mueller? There are  
16 none. Thank you very much.

17 (Whereupon, the witness was excused.)

18 JUDGE BAKER: Mr. English?

19 MR. ENGLISH: Your Honor, before the first  
20 witness for Proposal 8, I have some documents that I  
21 would like to introduce and these have already been  
22 discussed with the Parties, but, the first document to  
23 be marked as an exhibit is a compilation of official  
24 documents of the California Department of Food and  
25 Agriculture. And I want to hand you a copy.

1 JUDGE BAKER: Very well. Thank you.

2 MR. ENGLISH: These documents, Your Honor, I  
3 represent are, with one exception, identical documents,  
4 the documents that were introduced as official  
5 documents from the California Department of Food and  
6 Agriculture at the prior hearing in the Upper Midwest  
7 that has been referenced here in this proceeding.

8 The one exception is to have D, for this  
9 document, which is California Dairy Information  
10 Bulletin effective August 2001. And it is perfectly  
11 obvious why that wasn't available at the June  
12 proceeding.

13 If I could have this document marked, Your  
14 Honor.

15 JUDGE BAKER: And it shall be marked as  
16 Exhibit 21 for identification.

17 (The document referred to  
18 was marked for identification  
19 as Exhibit 21.)

20 MR. ENGLISH: Your Honor, I will just go  
21 quickly through the index.

22 The first two documents, Tab A and Tab B are  
23 stabilization marketing plans for Southern California  
24 and Northern California. Tab C is the California  
25 Pooling Plan for Market Milk as amended, effective July

1 1, 1997. Tab D is the California Dairy Information  
2 Bulletin mentioned previously. The effective date  
3 August 2001. Tab E is the California Dairy Statistics  
4 2000. Tab F is Milk Pricing in California. Tab G is  
5 History of the California Milk Pricing Program. And  
6 Tab H is the California Dairy Information Bulletin from  
7 1999.

8 Your Honor, I could take official notice, I  
9 believe of these, but I believe it is more appropriate  
10 to have them be in the transcript. And so I would ask  
11 at this time admission of Exhibit 21.

12 JUDGE BAKER: Are there any questions or  
13 objections? There are none. Exhibit 21 is admitted  
14 and received into evidence.

15 (The document referred to,  
16 having been previously marked  
17 as Exhibit 21  
18 was received in evidence.)

19 MR. ENGLISH: Thank you, Your Honor.

20 The next document, Your Honor, again, having  
21 been discussed with the major participants, if I could  
22 have marked as Exhibit 22, a multiple page document,  
23 which is a portion of the transcript from the Upper  
24 Midwest hearing. And a portion only. And I will  
25 describe it. I would note that I noted today when I

1 picked it up, that it is called [The Grievance Board,  
2 United States Department of Agriculture] in the caption  
3 of this and I make no comment about how happened, but,  
4 I represent that this is the transcript from York  
5 Services. It has the index, pages two through four and  
6 then it has pages 164 through 194, which is the  
7 testimony of the state officials from California. Two  
8 officials, Kelly Krug and Robert Horton, who testified  
9 in the Upper Midwest. And I have for this hearing  
10 purpose only obtained the consent of Mr. Beshore, Mr.  
11 Hahn and Mr. Vetne with respect to admitting this  
12 document. I understand there will not be an objection  
13 from them. If I need to I will make a legal argument  
14 about it, but I believe that as the testimony of state  
15 officials that were subject to cross examination for  
16 the sole purpose of describing the documents that I  
17 have now admitted as Exhibit 21.

18 JUDGE BAKER: Did you contain the consent and  
19 agreement of Mr. Cooper?

20 MR. ENGLISH: I believe Mr. Cooper will speak  
21 for himself. I think what he said was if nobody else  
22 objected, he wouldn't.

23 MR. COOPER: Yes, our position was that, you  
24 know, it was a question, you know, whether they would  
25 be able to cross examine here or not, but if nobody

1 else objects we will not.

2 JUDGE BAKER: Very well. Are there any  
3 objections? Let the record reflect that there are  
4 none.

5 MR. ENGLISH: May I have this marked as  
6 Exhibit 22?

7 JUDGE BAKER: Exhibit 22 is so marked and it  
8 is also admitted into evidence.

9 (The document referred to  
10 was marked for identification  
11 as Exhibit 22 and was received  
12 in evidence.)

13 MR. ENGLISH: Thank you, Your Honor.

14 And I also thank the indulgence of the  
15 Parties for that as well.

16 At this time Mr. Gulden will provide  
17 testimony on Proposal 8. And I think for his  
18 convenience, it makes more sense, he is also going to  
19 go ahead and give his testimony on Proposal 9, so he  
20 doesn't have to keep getting up and down here.

21 JUDGE BAKER: You are still under oath. Thank  
22 you.

23 (Pause.)

24 MR. ENGLISH: Mr. Gulden, you have a statement  
25 for Proposal 8 and there is a one page document or

1 actually it is multi page, it looks like attached.

2 Your Honor, maybe we could have his statement  
3 marked as an exhibit since it has these two pages.

4 JUDGE BAKER: Very well. It will be marked as  
5 Exhibit 23.

6 (The document referred to  
7 was marked for identification  
8 as Exhibit 23.)

9 Whereupon,

10 NEIL GULDEN

11 having been previously duly sworn, was recalled as a  
12 witness herein and was examined and further testified  
13 as follows:

14 DIRECT EXAMINATION

15 BY MR. ENGLISH:

16 Q Mr. Gulden, you are still under oath. Could  
17 you give your statement in support of Proposal number  
18 8?

19 A Yes. DMPI represents approximately 5,000  
20 dairy farmers in seven Midwest states. Our milk is  
21 pooled on Federal Order 1030, Upper Midwest marketing  
22 area and 1032, the Central Marketing area, where we  
23 service major customers.

24 We also own and operate 13 manufacturing  
25 plants in Minnesota, Wisconsin, South Dakota and Iowa.

1 My testimony is in support of Proposal number 8, which  
2 also has the support of Anderson-Erickson Dairy  
3 Company, Family Dairies, USA, First District  
4 Association, Foremost Farms, Swiss Valley Dairy,  
5 Milwaukee Cooperative Milk Producers, Manitowoc Milk  
6 Producers Cooperative and Midwest Dairymen Company.

7 Section 1032.12(b)(3) states that a producer  
8 shall not include a dairy farmer whose milk is received  
9 by diversion at a pooled plant from a handler regulated  
10 under another federal order, if the other federal order  
11 designates the dairy farmer as the producer under that  
12 order, and that milk is allocated by request to an  
13 utilization other than Class I. And 1032.12(b)(4)  
14 states that a producer should not include a dairy  
15 farmer whose milk is reported as diverted to a plant  
16 fully regulated under another federal order with  
17 respect to that portion of the milk so diverted, that  
18 is assigned to Class I under the provisions of such  
19 other order.

20 In short the language is saying that a  
21 producer sharing in the proceeds of one federal order  
22 should not be allowed to share in the proceeds of  
23 another federal order on the same milk in the same  
24 month.

25 Proposal number 8 is simply asking that a

1 producer sharing in the proceeds of a state marketwide  
2 pool not be allowed to be share in a federal order pool  
3 on the same pounds of milk in the same month.

4 California has chosen to op for a state marketwide  
5 order for their dairy farmers, and that is their right  
6 and their choice, but just as is the case between  
7 federal orders, their milk should not be allowed to be  
8 part of two marketwide pools at the same time. This is  
9 exactly what has been happening with milk from  
10 California pooled on Federal Order 32 since March of  
11 2001. And to an increasing degree, right up through  
12 September of 2001. I assume the situation hasn't  
13 changed since September 2001, Federal Order 32 pool  
14 statistics were announced.

15           Since March 2001 California milk has been  
16 pooled in increasing numbers on Federal Order 32. The  
17 attached exhibit, I guess this is all one exhibit, I  
18 guess we could call it page four, I guess that is  
19 marked on the bottom, on page four. Page four shows my  
20 calculation on the effect on Federal Order 1032 PPD of  
21 the California milk pooled on the order in the months  
22 of March and September 2001. These two examples show  
23 the methodology used to arrive at an estimated effect  
24 on the Federal Order 32 PPD. The California pounds of  
25 milk pooled and dollar value of location adjustment

1 were subtracted from the producer milk and net PPD  
2 value published in the official Federal Order 1032  
3 producer price differential, component prices and  
4 average component tests for the respective months.  
5 This resulted in what the PPD would have been if no  
6 California milk had been pooled.

7           Again, this would be page number five, shows  
8 the net effect of this same calculation from March 2001  
9 through September 2001. This adds up to almost two  
10 million dollars and a weighted average of about two  
11 cents a hundred weighed over the seven month period.  
12 This was, through these seven months and continuous  
13 today to be money siphoned away from Midwest dairy  
14 farmers. It would not have been allowed between  
15 federal orders and should not be allowed to continue  
16 between a federal order and a state order. In light of  
17 the obvious inequity and injurious effect on Midwest  
18 dairy farmers, we believe that the Secretary should  
19 handle this issue on an emergency basis, going directly  
20 to a final decision without the time consuming  
21 intermediate steps of a recommended decision.

22           That concludes my statement, Your Honor.

23           JUDGE BAKER: Thank you very much.

24           BY MR. ENGLISH:

25           Q     Mr. Gulden, for purposes of your calculation

1 on page four, would it be correct that you assumed that  
2 the producer milk associated from California, that was  
3 diverted back to California plants was at the lowest  
4 class price?

5 A Yes, I did, Class III.

6 Q And so, for instance, that would have been  
7 for the month prior to July, Class III and for the  
8 months post July, would have been Class IV? I am  
9 sorry, the other way around.

10 A Really the only effect of that, Chip, would  
11 be that it was diverted in California.

12 Q Okay.

13 A Really is the only effect and that it was  
14 diverted at an average location adjustment of minus 37  
15 cents.

16 Q But, this analysis you have done is  
17 consistent with the analysis that was done in the Upper  
18 Midwest, correct?

19 A That is correct.

20 Q For the same purpose. And is consistent with  
21 the analysis, although done for a different reason,  
22 that the DFA did from Professor Theime, correct?

23 A Yes.

24 Q And just to be clear, the issue here is that  
25 if milk is pooled on a marketwide pool, in some part of

1 the country, that milk is available to Class I use,  
2 correct?

3 A Yes.

4 Q And if it is simultaneously going to be  
5 pooled somewhere else, that would have to mean that it  
6 is simultaneously available to a different Class I  
7 market on the same milk, correct?

8 A Yes, technically correct, yes.

9 Q And that really can't be, correct?

10 A That is right.

11 MR. ENGLISH: That is all I have, thank you.

12 JUDGE BAKER: Thank you. Are there any  
13 questions with respect to this testimony? Let the  
14 record reflect that are none.

15 Oh, oh, Ms. Brenner. Thank you.

16 CROSS EXAMINATION

17 BY MS. BRENNER:

18 Q Mr. Gulden, looking at page number four, I  
19 just wanted to clarify what some of these numbers  
20 represent. For March 2001, it is one cent times 1.53  
21 billion pounds.

22 A Yes.

23 Q And then what is the MIL stand for, where it  
24 says 15 cents?

25 A That just stands for .15 million dollars,

1 150,000 dollars.

2 Q Okay, .15 million dollars. Okay.

3 MS. BRENNER: Okay. That is all.

4 JUDGE BAKER: Thank you. Are there any other  
5 questions? There are none. Thank you very much, Mr.  
6 Gulden.

7 THE WITNESS: I have a statement on Proposal  
8 9, if I may read that.

9 JUDGE BAKER: Oh, very well. Thank you.

10 (Pause.)

11 JUDGE BAKER: Mr. English, did you want to  
12 move 23 into evidence.

13 MR. ENGLISH: Yes, I would move Exhibit 23  
14 into evidence.

15 JUDGE BAKER: Are there any questions or  
16 objections? Hearing none, Exhibit 23 is admitted and  
17 received into evidence.

18 (The document referred to,  
19 having been previously marked  
20 as Exhibit 23  
21 was received in evidence.)

22 THE WITNESS: My testimony, I will skip the  
23 first two paragraphs. My testimony is in support of  
24 Proposal number 9, which also has the support of  
25 Foremost Farms, Land O' Lakes, First District

1 Association, Family Dairies USA, Midwest Dairymen  
2 Company, Manitowoc Milk Producers Cooperative and  
3 Milwaukee Cooperative Milk Producers.

4 One objective of this proposal is to allow a  
5 dairy farmer's milk to be producer milk for the entire  
6 month as long as one day's production is physically  
7 received at a pooled plant any day during the month.  
8 Apparently a dairy farmer trying to qualify milk on  
9 Federal Order 32 be it coming back from dry or back from  
10 degrade or a new startup, could not have the milk  
11 considered producer milk until the first day the milk  
12 is received at a pooled plant. There are various  
13 circumstances where a producer could miss several days  
14 of pool milk value, such as weather problems, truck  
15 breakdowns and scheduling conflicts. Proposal number 9  
16 would eliminate the necessity of delivering milk to a  
17 pooled plant the first day the producer is eligible for  
18 pooling, which isn't always possible or practical.

19 Proposal number 9 would also avoid the  
20 necessity of pooling one day's production of certain  
21 producers just to maintain order association, when the  
22 milk would normally not have been pooled due to  
23 inverted pricing. Inverted pricing is caused by rapidly  
24 increasing markets, which then cause Class III and/or  
25 Class IV prices to be higher than the statistical blend

1 price value of the order. Since pooling diverted milk  
2 to non pool plants is optional, the milk would not be  
3 pooled for that month. Unless Proposal number 9  
4 language is adopted, Federal Order 32 will continue to  
5 require one day's production to be pooled in order not  
6 to lose association with the order, regardless of  
7 whether it is an economically sound decision to do so.

8 We believe that a producer should not lose  
9 producer milk status due to milk not pooled, due to  
10 inverted pricing.

11 That concludes my statement.

12 JUDGE BAKER: Thank you, Mr. Gulden. Are  
13 there any questions? Let the record reflect that there  
14 are none. Thank you very much.

15 (Whereupon, the witness was excused.)

16 MR. ENGLISH: Your Honor, the next witness  
17 would be Mr. Carl Conover.

18 JUDGE BAKER: Very well, Mr. Conover. Thank  
19 you.

20 (Pause.)

21 Whereupon,

22 CARL CONOVER

23 having been first duly sworn, was called as a witness  
24 herein and was examined and testified as follows:

25 DIRECT EXAMINATION

1 BY MR. ENGLISH:

2 Q Mr. Conover, could you please state your full  
3 name for the record?

4 A My name is Carl Conover.

5 Q And you are appearing today as a consultant  
6 for Proponents of Proposal 8, which also includes Suiza  
7 Foods?

8 A That is true.

9 Q Those in the proposal notice, hearing notice,  
10 plus Suiza Foods, correct?

11 A Yes.

12 Q And I will try to keep this very brief, but,  
13 could you briefly tell us about how many years you have  
14 spent in federal marketing order employment of one kind  
15 or another?

16 A I went to work in the Program, May 1, 1950,  
17 so I think that is something over 50 years. In the  
18 Program I was with the USDA for 32 of those years.

19 Q And since then you have been employed as a  
20 consultant by various entities and you appeared at both  
21 USDA and after USDA at federal order hearings.

22 A Yes, I have.

23 Q And you have been qualified numerous times as  
24 an expert with respect to the workings of federal milk  
25 marketing orders?

1           A     Several times.

2           Q     Only several?

3           A     Twenty.

4           Q     Okay.

5                     MR. ENGLISH: Your Honor, I would ask that Mr.  
6 Conover be acknowledged as an expert for the purpose of  
7 this hearing with respect to the workings of Federal  
8 Milk Marketing orders.

9                     JUDGE BAKER: Are there any questions or  
10 objections? Hearing none, he shall be so regarded.  
11 Mr. English?

12                    BY MR. ENGLISH:

13           Q     Mr. Conover, would you please proceed to give  
14 your testimony.

15           A     The Agriculture Marketing Agreement Act  
16 authorizes an adjustment of minimum order prices to  
17 reflect location of milk. Location adjustments were  
18 for many years a reasonable effective tool in  
19 attracting the milk where needed. And at times in  
20 discouraging milk from being associated with the market  
21 when not needed. Such adjustments were for the most  
22 part based on the mileage from a basing point,  
23 reflecting the area's fluid needs, to where the milk  
24 was received. The rate which was primarily to reflect  
25 transportation costs, varied from one area to another

1       until the 1960s, when 1.5 cents for 10 mile was used in  
2       most markets. The use of the zone pricing and  
3       adjustments in many areas for increased in  
4       transportation costs introduced a lack of uniformity as  
5       to the rate. Diverted milk was at times priced at a  
6       point from which diverted, but this provision was  
7       eliminated when it became obvious that it was  
8       encouraging the shifting of milk from one area pool to  
9       another for purposes not compatible with the purposes  
10      of the Agriculture Marketing Agreement Act.

11               With the advent of Order Reform, a different  
12      pricing structure was promulgated. Order prices  
13      reflected local supply demand conditions and not  
14      distance from an arbitrary pricing point. Diverted  
15      milk that could be received miles from the marketing  
16      area can be priced at the same price as milk at the  
17      location of milk at the plant from which the milk was  
18      diverted. A situation not dissemble from that created,  
19      from that created problems many years ago.

20               Under Reform, the situation has the potential  
21      to be even more disruptive to the market because the  
22      price at the location of the plants to which the milk  
23      is diverted can be higher than the location from which  
24      diverted. Under the situation alluded to, it is  
25      obvious that the distant milk will not be made

1 available, will not be available to the fluid plants if  
2 the distance producer receives a higher or as high  
3 price by delivering to a local plant rather than a  
4 distributing plant serving the marketing area. The  
5 added transportation costs are, of course, another  
6 discentive.

7           During the rulemaking process of Order  
8 Reform, USDA considered and rejected the idea of open  
9 pooling, where milk from any market can be pooled in  
10 any market. The reason given was that there is no  
11 assurance that the milk will be made available when  
12 needed in the market for fluid use. Assuring an  
13 adequate supply of milk for fluid use has been cited  
14 many times as a primary purpose of the order program.  
15 This purpose is of dubious import in markets with 20 or  
16 less percentage of fluid use, which probably explains  
17 why there is the next thing to open market pooling in  
18 Order 32 and other orders. I don't know what that five  
19 is doing there.

20           High shipping requirements, higher shipping  
21 requirements would be hard to justify in an area where  
22 the local production far exceeds the fluid market  
23 needs. Uniform treatment of producers is a statutory  
24 requirement. Equitable treatment is surely under the  
25 canopy of uniform treatment. Equitable treatment

1 includes equal sharing of the market proceeds among all  
2 producers, but would not prescribe equal treatment for  
3 producers who are sharing in another pool.

4 As shown by the information provided earlier  
5 in this hearing, the pooling of the same milk on Order  
6 32 and the California Marketwide Pool has resulted in a  
7 non uniformed distribution from the Order 32 pool.  
8 Those producers whose organizations have received the  
9 pool draw on the California milk end up with a greater  
10 share of the Order 30 pool than those producers receive  
11 no part of the pool draw on California milk.

12 I have listened to and read Mr. Gulden's  
13 methodology and how he computed the impact of the  
14 California milk on Order 32 and I adopted and agree  
15 with it wholeheartedly. I believe he said the average  
16 was about two cents a hundred weight and resulted in  
17 two million dollars over the March, August period,  
18 September period.

19 Hence, the need for order language to exclude  
20 the milk of a producer whose milk is subject to pooling  
21 under any other marketwide pool.

22 Federal order provisions have always, unless  
23 through oversight, been tailored to limit a producer to  
24 sharing in but one market order pool on the same milk.

25 On occasion when milk was reported and pooled on more

1 than one market, USDA auditors would qualify the milk  
2 to the extent necessary to prevent double pooling. It  
3 should be disqualified, excuse me.

4 While information as to exactly how much milk  
5 from California was moved directly to the Order 32 pool  
6 plants, is not available. The California data suggests  
7 that no more than the amount required for producer  
8 qualification actually moved to the plants in this  
9 market. An examination of the California Department of  
10 Food and Agriculture data and my knowledge of the milk  
11 receipts in the Western United States, reveals that  
12 almost all of the milk moved from California farms to  
13 non California plants, can be accounted for as being  
14 received in Oregon, Nevada, and Arizona. This means  
15 that very little of the California milk pooled on Order  
16 32 was physically received at Order 32 pool plants, but  
17 instead was received at California plants and is  
18 eligible for pooling through California's marketwide  
19 pooling plant.

20 This proposal is designed to limit the  
21 pooling on Order 32 of only that milk which is pooled  
22 on a marketwide pool, federal or state. If milk from  
23 Western Montana, Western New York, Pennsylvania, if it  
24 adopts a marketwide pooling, or California is not  
25 priced and included any marketwide pool, then it will

1 remain eligible for pooling on Order 32. It is not the  
2 intent of this proposal to create a trade barrier or  
3 otherwise limit the movement or pooling of milk which  
4 does not obtain pooling benefit elsewhere.

5 This proposal would not bar the pooling of  
6 milk that was moved directly to a pooled distributing  
7 plant from a farm outside the marketing area, be it a  
8 farm in California or any other state. Such milk in my  
9 view would not be included in any state operated  
10 marketwide pool. I base this belief on the court  
11 decisions that found that the states lack the power to  
12 regulate milk moving interstate. These are the very  
13 decisions that precipitated the passage of the  
14 Agriculture Marketing Agreement Act by Congress and the  
15 advent of Federal Milk Orders.

16 According to CDFA data, milk production  
17 leaving California farms and received by plants outside  
18 California, ranges from 21.5 million to 28.5 million  
19 pounds per month. As indicated earlier, this milk is  
20 primarily accounted for by deliveries to plants in  
21 states neighboring California. It is evident that  
22 almost all of the 70 plus million pounds of milk from  
23 the Market Administrator's data as being produced in  
24 California and pooled Order 32, was priced and pooled  
25 each month recently under the California marketwide

1 pool.

2 Pooling of milk that is used in non fluid  
3 products, assumes that such milk is a reserve supply  
4 for the market and is available to supply fluid  
5 distributing plants if needed. The same milk,  
6 obviously, couldn't be used to supply fluid  
7 distributing plants in another market regardless of  
8 whether that market is a federal or a state marketwide  
9 pool. It is, therefore, erroneous to presume that the  
10 same milk could be available simultaneously in more  
11 than one market and use that basis for sharing in more  
12 than one pool. The solution is not all that  
13 complicated, since Federal Milk Orders have dealt with  
14 this problem with respect to duplicate reporting of  
15 receipt, of milk receipt in more than one order for  
16 many years. A handler on Order 32 should not be  
17 permitted to pool milk as diverted milk if that milk is  
18 priced and pooled under a federal or state order with  
19 pricing and pooling of milk values on a marketwide  
20 basis.

21 Q Mr. Conover, throughout your testimony you  
22 have reference marketwide pool, and the evidence is now  
23 in the record from Exhibits 21 and 22. Have you  
24 reviewed that information either for this hearing or  
25 for the hearing in Order 30? The information in

1 Exhibits 21 and 22 which were the California documents.

2 A Yes, I have.

3 Q Yes.

4 A Yes.

5 Q And after 50 years of experience in federal  
6 milk market orders, what have you concluded concerning  
7 California's program as to whether or not is a  
8 marketwide pool?

9 A I haven't the slightest doubt that the  
10 California is a marketwide pool.

11 Q Okay. There are those who say it is not a  
12 marketwide pool, and among the reasons they cite are  
13 the existence of California's quota and overbase  
14 system. Could you comment on that?

15 A Sure. I don't think that makes it not a  
16 marketwide pool and I would compare that to the federal  
17 marketing order that was in Puget Sound for, what, 10  
18 years, where they had a Class I quota plan, which is  
19 very similar to what California has. They also had  
20 that in the Atlanta order for a few years. And that  
21 was surely considered a marketwide pool. If it wasn't,  
22 it wasn't authorized by the Agriculture Marketing  
23 Agreement Act.

24 Q Why do you say that?

25 A Well, it specifically authorizes the

1 Department of Agriculture to have either a marketwide  
2 pool or an individual handler pool. And I think you  
3 can discount, it wasn't an individual handler pool by  
4 any stretch, so it must have been a marketwide pool to  
5 be authorized by the Act. And it, the Class I base  
6 plan under Puget Sound was, was very similar to the  
7 quota plan in California.

8 Q Another criticism that we heard in the Upper  
9 Midwest of this proposal was that it could potentially  
10 cover other parts of the country, such as for instance,  
11 Montana. I think you have addressed this in your  
12 testimony, but, isn't it the case that if, this really  
13 isn't about California, it is about double pooling,  
14 correct?

15 A Absolutely.

16 Q It happens in this instance that it is  
17 California milk that is being double pooled, correct?

18 A That is right.

19 Q And the answer to the objection is, well, if  
20 you make the delivery to Order 32 then you won't be  
21 pooled on California.

22 A I think I addressed that, and that is  
23 absolutely right.

24 Q And in fact what that effectively means is  
25 the handler has the choice, he can choose to pool on

1 Order 32 or he can choose to pool on California. We  
2 are not denying him that choice, correct?

3 A We are not denying him. I don't believe he  
4 has the choice to pool under California if it goes into  
5 a plant there, it is going to be pooled there.

6 Q But, the handler has the choice of where to  
7 put the milk.

8 A That is true.

9 Q And by exercising the choice of where to put  
10 the milk, it can exercise the choice of about where the  
11 milk is pooled.

12 A He can select the market, then, yes.

13 Q And as such, there is no foreclosure of  
14 pooling, correct?

15 A It doesn't bar the door to the milk coming  
16 from any place, any state and being pooled on Order 32,  
17 as long as that milk is not also pooled on, in the  
18 marketwide pool elsewhere.

19 Q And to be clear the Proposal 8 is intended to  
20 be federal or state marketwide pools only, correct?

21 A Very true.

22 Q It is not intended to address in any way,  
23 shape or form, over order pricing agencies operated  
24 outside the confines of governmental entities.

25 A It was not intended to cover that and I

1 don't, I don't see an aspect of duplicate pooling in  
2 that situation anyway, because the, if it is over order  
3 pricing, it is not pooled under the federal order.

4 Q Is it your understanding that concentrated  
5 milk under Part 1000 is a fluid milk product?

6 A Yes.

7 Q And do you know that in the western part of  
8 the United States there are farms that are considering  
9 or are now building condensing operations on their  
10 farms?

11 A Yes.

12 Q And so, notwithstanding another criticism  
13 which is if you adopt Proposals 1 through 5, you don't  
14 need Proposal 8, could you foresee a circumstance where  
15 because of the existence of concentrated milk supplies,  
16 someone could still manage to double pool their milk  
17 from a farm located in California or somewhere else?

18 A Well, I can see how the, concentrating the  
19 milk would facilitate moving that milk into this market  
20 for qualification and pooling.

21 MR. ENGLISH: That is all I have. The witness  
22 is available for cross examination.

23 JUDGE BAKER: Thank you. Are there questions  
24 for Mr. Conover? Mr. Vetne?

25 CROSS EXAMINATION

1 BY MR. VETNE

2 Q Mr. Conover, first, with respect to any  
3 questions I may ask here, I am not acting on behalf of  
4 Land O'Lakes.

5 With respect to choice, marketing choice, you  
6 indicated that if milk from California is received at a  
7 California plant it has no choice but to be pooled.

8 A If it is produced in California, that is my  
9 understanding.

10 Q Produced in California and received at a  
11 plant.

12 A In California.

13 Q And so the California system captures all  
14 milk produced and received in, produced in and received  
15 at California plants.

16 A To the best of my knowledge, yes.

17 Q But, if California milk is received across  
18 the border, you know, for example, Schriber Cheese in  
19 Tempe, Arizona or United Dairymen Butter Plant in  
20 Arizona or at Anderson Dairy in Nevada or at any number  
21 of non pooled cheese plants in Idaho and in Utah, that  
22 milk even though it was produced in California wouldn't  
23 draw a California quote or overbased --

24 A I think I testified there was 20 some million  
25 pounds of milk a month that their statistics shows

1 moves out of the state and is not included in the pool.

2 Q A producer or producer/supplier in  
3 California, then may avoid and it is their intention to  
4 avoid, whatever restrictions are imposed by Proposal 8,  
5 double pooling, merely by diverting from Order 32 to,  
6 instead of to a California plant, to a plant across the  
7 border and that would be fine under the proposal  
8 because there would be no double pooling. It would be  
9 diverted producer milk ineligible to draw from the  
10 California pool or any other pool.

11 A Right, I would agree.

12 MR. VETNE: Okay. That is all I have.

13 JUDGE BAKER: Thank you, Mr. Vetne. Are there  
14 other questions for Mr. Conover? There appear to be  
15 none. Thank you, Mr. Conover.

16 (Whereupon, the witness was excused.)

17 Whereupon,

18 JIM HAHN

19 having been previously duly sworn, was recalled as a  
20 witness herein and was examined and further testified  
21 as follows:

22 THE WITNESS: Your Honor, Jim Hahn with Land  
23 O Lakes, may I read a statement which introduces what  
24 amounts to a modification of this proposal?

25 JUDGE BAKER: Very well, if you would take the

1 stand and you are still under oath.

2 THE WITNESS: Thank you.

3 Proponents of Proposal number 8 are seeking  
4 to restrict the pooling of milk produced in California  
5 on the basis that it is sharing in a marketwide pool.  
6 California does not have a marketwide pool. Proceeds  
7 from fluid and soft use are paid to producers on the  
8 basis of quota equity and not distributed marketwide.

9 Overbase or non quota milk is priced based on  
10 manufacturing values. Only recently did the California  
11 Institute -- of \$1.70 per hundred weight, which is 19  
12 and a half cents per pound of solids, non fat, on the  
13 skim side to limit the spread between quota and  
14 overbased milk.

15 Furthermore, adoption of this proposal would  
16 prohibit federal order pooling of milk regulated under  
17 state order with bonafide marketwide pooling. The  
18 North Dakota State Order and the Pennsylvania Milk  
19 Marketing Board currently are considering changing  
20 provisions to incorporate marketwide pooling. Other  
21 pricing programs in various over loaded pricing  
22 agencies, such as the Upper Midwest Marketing Agency,  
23 would appear to be threatened should this proposal be  
24 adopted. The PMB Class I state mandated price is \$1.40  
25 per hundred weight, yet the challenge of double dipping

1 goes unheard.

2           The real issue facing this issue, the real  
3 issue facing this industry is not of California milk,  
4 the impact of pooling reserve supplies is similar  
5 whether that reserve is located in Fredericksburg,  
6 Sioux Falls or Talary. Regardless of location, the  
7 performance criteria must be met to provide for pooling  
8 eligibility. Land O' Lakes is associated the lowest  
9 cost milk in its system via California, with the  
10 Central Order. Creating barriers to pooling this milk  
11 would only facilitate the pooling of milk with a higher  
12 location value on a Central Order resulting in lesser  
13 PPD for all producers on this order. LOL would support  
14 the premise that overbased milk be eligible for pooling  
15 in the Central Order while restricting the pooling of  
16 quota milk.

17           That concludes my statement.

18           JUDGE BAKER: Thank you. Are there any  
19 questions? There are none. Thank you so much.

20           THE WITNESS: Thank you.

21           (Whereupon, the witness was excused.)

22           JUDGE BAKER: Other than Mr. Banderob, are  
23 there any other people who wish to be heard?

24           (Pause.)

25           JUDGE BAKER: Who wishes to be heard?

1 MS. BRENNER: I believe Mr. Hollon was going  
2 to take the stand.

3 JUDGE BAKER: Oh, all right. Thank you. Yes,  
4 yes.

5 Whereupon,

6 ELVIN HOLLON

7 having been previously duly sworn, was recalled as a  
8 witness herein and was examined and further testified  
9 as follows:

10 (Pause.)

11 MR. BESHORE: Before Mr. Hollon proceeds, Your  
12 Honor, I would like to have marked as Exhibits 24 and  
13 25, Mr. Hollon's statement regarding Proposal 6, that  
14 would be 24 and the exhibits in support of Proposal 6  
15 as 25. Copies of those documents have been available  
16 to the stenographer and to all participants in the  
17 room.

18 (The documents referred to  
19 were marked for identification  
20 as Exhibits 24 and 25.)

21 DIRECT EXAMINATION

22 BY MR. BESHORE:

23 Q And without any further ado, Mr. Hollon is  
24 previously sworn and qualified and I would ask him to  
25 proceed with his statement in support of Proposal 6.

1           A       I would like to turn first to the exhibits  
2 for Proposal 6 of which there are two. One is a, Table  
3 1 is a one pager. And then Table 2 has, Table 2, 3, 4  
4 and 5 have two pages each and then there is a chart.

5                   In Table 1 is simply a comparison of the  
6 payment provisions on federal orders. The 11 federal  
7 orders and the approximate dates on which the advanced  
8 payment is due, and the approximate rate, or actually  
9 the actual rate. And the purpose of this exhibit is  
10 simply to show that the 11 different orders do not have  
11 the same exact uniformed requirement and that some  
12 orders have requirements relative to the blend price,  
13 others to the class price, the lowest class price. And  
14 there are the Arizona order and the Western order  
15 actually have multiples of the price.

16 Table 2, pages one and two, are blend prices and class  
17 prices for the period January 1997 through September.  
18 The first column is labeled Class III A or Class IV.  
19 The second column is labeled Class III. The third  
20 column is the lower of those two. The next columns  
21 represent the lower of those two multiplied by 105,  
22 106, 107, 108, 109, and 110 percent. And the final  
23 column represents the blend price for that month. And  
24 in the period of January of 1997, January of 1998 and  
25 January of 1999, obviously there was no Federal Order 32

1 blend price, so, we took that prevailing blend price  
2 and the pounds in the pool and multiplied those out for  
3 those months to get a proxy value, divided that by the  
4 total of all the pounds to get a proxy blend price.

5 On the second page, it is a half page, noted  
6 that there are two figures with boxes around them. The  
7 comparison for which this exhibit tries to make is the  
8 current month's blend price, September would have been  
9 1656, with the lowest of the two class prices of the  
10 prior month, in this case 1506, and this difference is  
11 what we seek to analyze through this exhibit. And this  
12 is the comparison for all of the other tables and the  
13 subtraction is \$1.50.

14 Table 3, pages one and two is simply the  
15 absolute value then of this subtraction, looking at the  
16 second page of Table 3, the \$1.50 is in a box. And the  
17 summary statistics down below say for the entire 56  
18 month period, the average of this blend minus lowest  
19 class price was \$1.59, with a range of minus 11 to plus  
20 459. The first 36 months there was an average of \$1.52  
21 and the last 20 months an average of a \$1.70. And the  
22 crux of our concern is that spread seems to be  
23 widening. The average for the whole period, 1.59, the  
24 first period which is before Federal Order Reform, a  
25 1.52, second period a 1.70.

1           Table 4, pages one and two, is an every month  
2           percentage comparison. Again, going to the second  
3           page, for example, the 91 percent is, it says that the  
4           lowest class price divided by the blend represented 91  
5           percent of that value. It says this is done for each  
6           and every month at both the actual and the inflated at  
7           56 through 10 percent. And the first 36 month average  
8           was 89 percent, the last 20 months average was 86  
9           percent. In order to try to take out some of the  
10          fluctuations, we did a three month moving average, and  
11          that is the result of, those results are on Table 5.  
12          And going to the second page of Table 5, the first 36  
13          months of this moving average, percentage, averaged 89  
14          percent, the last 20 months averaged 86 percent. And  
15          at the five, the five percent level or 95, inflated by  
16          105 percent level, averaged 90 percent.

17                 The graph or the chart takes these moving  
18                 averages, average percentages and tries to put them on  
19                 a visual basis. The line across the entire period that  
20                 has the circles as the marker, is the actual values.  
21                 If you were take a straight edge or a pencil or draw a  
22                 line at January of 2000 and look at from January of 1997  
23                 to January of 2000, you can see with only a few  
24                 exceptions that this relationship range between 85  
25                 percent as the low and 95 percent as the high. If you

1 look at the time period from January 2000 to date, you  
2 can see the line with the circle markers averaged  
3 between 80 and 90 percent. And the proposal that we  
4 are making or the proposal that we submitted was for  
5 110 percent, but, after examining the data, it appears  
6 that 105 percent is a more realistic and appropriate  
7 number. So, that line is marked with the triangles.  
8 And so our proposal is that the lowest class price be  
9 inflated by five percent in order to set the advance  
10 price.

11 Moving back then to the statement regarding  
12 Proposal 6, is a two page statement which then follows  
13 the summary of the language. Proposal 6 reflects the  
14 need to alter the advanced price, the advanced payment  
15 provisions for Order 32. The dairy farmers members of  
16 our group continue to request that they be paid an  
17 advanced payment that more closely resembles the actual  
18 blend price. Their individual farm businesses needs,  
19 demand a more consistent cash flow in order to remain  
20 viable. The current provisions that call for advanced  
21 billings at the prior month's lowest class price do not  
22 provide sufficient funds to meet our members' cash flow  
23 objectives. The final rule makes the following  
24 statements about the uniform price and the advanced  
25 price:

1                   Payments to producers in cooperative  
2                   associations. The AMAA provides that handlers must pay  
3                   to all producers and producer associations the uniform  
4                   price. The existing order generally allow proper  
5                   deductions authorized by the producer in writing.  
6                   Proper deductions are those that are unrelated to the  
7                   minimum value of milk in the transaction between the  
8                   producer and handler. Producer associations are  
9                   allowed by the statute to reblend their payments to  
10                  their producer members, the -- Wholesale Act and the  
11                  AMAA make it clear that cooperative associations have a  
12                  unique role in this regard. The payment provisions to  
13                  producers and cooperatives for the consolidated orders  
14                  vary with respect to payment frequency, timing and  
15                  amount. These differences are generally consistent  
16                  with current order provisions and with industry  
17                  practices and customs in each of the new marketing  
18                  areas. Each of the new orders will require handlers to  
19                  make at least one partial payment to producers in  
20                  advance of the announcement of the applicable uniform  
21                  prices.

22                   The Florida Order will require two partial  
23                   payments, mirroring the payment schedule now provided  
24                   in the three separate Florida orders.

25                   The amount of the partial payment varies

1 among the new orders, reflecting the anticipated  
2 uniform price. Thus, for example, in the Upper Midwest  
3 order, the partial payment rate for milk received  
4 during the first 15 days of the month, will not be less  
5 than the lowest announced price for the preceding  
6 month. By comparison, the partial payment for the  
7 Florida order for milk received during the first 15  
8 days of the month will be at a rate that is not less  
9 than 85 percent of the preceding month's uniform price  
10 adjusted for plant location.

11 There are a wide variety of payment dates and  
12 payment levels among the various orders. The table  
13 identified as Exhibit 25, Table 1, entitled "Comparison  
14 of Payment Provisions, Federal Orders" presents the  
15 differing provisions. There is no precedent for a  
16 uniform payment level or terms across all orders.  
17 Among the order system there are three broad groupings.

18 In the Southern Order payments are set at a percentage  
19 of the prior month's blend price adjusted for location.

20 The Northwest and Central area of the country sets the  
21 advanced payment at the prior month's lowest class  
22 price. The Western Order uses an add on percentage  
23 applied to the month's, to the prior month's lowest  
24 class price.

25 The final rule supports the payment that all

1 handlers pay the uniform price. We can see no reason  
2 why the advanced payment should not come closer to  
3 approximating the uniform price. Examination of recent  
4 data shows the advance prices getting further from the  
5 uniform price. See Exhibit 25, Tables 1 through 8,  
6 well, actually that should be Tables 1 through 5, now,  
7 and charts.

8 By examining the data it is clear that there  
9 had been a change in trend in the advanced price versus  
10 blend relationship. The price measure is this month's  
11 blend less last month's lowest class price. For the  
12 period January 1997 through September 2001, 57 months,  
13 the monthly average spread between the two prices was  
14 \$1.59. The first 36 months averaged \$1.52, 1997  
15 through 1999, and the last 21 months, \$1.70.  
16 Graphically this trend is shown on the chart of price  
17 trends, Exhibit 25. Where even after a three month  
18 average was used to smooth some of the fluctuations, a  
19 difference in trend can be noted.

20 In order to determine a better relationship  
21 between the prior month's lowest class price and this  
22 month's blend price, the lowest class price was  
23 inflated by five, six, seven, eight, nine and ten  
24 percent. These ranges were chosen after testing  
25 several alternative branches. The spreads were

1 measured and compared in the same manner as the  
2 existing blend versus lowest class price. After  
3 examination it appears that a five percent inflation at  
4 the prior month's lowest class price is a reasonable  
5 adjustment to approximating the spread that existed  
6 over the first 36 month period.

7           It is a problem if the advanced price is  
8 larger than the final price, because some producers may  
9 not have enough funds to cover their deductions. Also  
10 in some extraordinary cases the advance price might  
11 over pay the total amount due and result in suddenly,  
12 in the need for some type of collection proceeding,  
13 which is difficult and costly. However, as dairy  
14 prices are more volatile, this is an issue under the  
15 current system even if no adjustment is made. Producer  
16 premiums are present in the Federal Order 32  
17 procurement area and that should buffer the overpayment  
18 concerns. This concern needs to be balanced by dairy  
19 farmers' right to a reasonable approximation of the  
20 blend advanced payment, blend price advanced payment.

21           Our experience is that the market carries a  
22 pay premium of well over a dollar a hundred, ranging  
23 from 75 cents to \$1.35. Thus, we would request that  
24 the rate for advanced payments be set at 105 percent of  
25 the prior month's lowest class price.

1           The language to effect our proposal would be  
2 as follows. And this language is lifted from the  
3 Notice of Hearing with the exception that and the first  
4 one is incorrect. So let me read it and correct it.

5           One thirty two point seven three payments to  
6 producers and cooperative associations. A(1), partial  
7 payment. For each producer who has not discontinued  
8 shipments as of the date of this partial payment,  
9 payment shall be made so that it is received by each  
10 producer on or before the 26 day of the month, except  
11 that is provided in Part 1000.9. For milk received  
12 during the first 15 days of the month, from the  
13 producer, at not less than and that should read 105  
14 percent times the lowest announced class price for the  
15 preceding month, less proper deductions authorized in  
16 writing by the producer.

17           Section C(1), for bulk fluid milk products  
18 and bulk fluid cream products received from a  
19 cooperative association in its capacity as the operator  
20 of a pool plant and for milk received from a  
21 cooperative association in its capacity as a handler  
22 pursuant to Section 1000 Part 9(c) during the first 15  
23 days of the month at not less than 105 percent times  
24 the lowest announced class price per hundred weight for  
25 the preceding month.

1 JUDGE BAKER: Thank you, Mr. Hollon.

2 THE WITNESS: Yes, Ma'am.

3 JUDGE BAKER: Mr. Beshore?

4 MR. BESHORE: Yes, Your Honor, Mr. Hollon also  
5 has a concluding statement and some comments.

6 (Pause.)

7 MR. BESHORE: Okay. We will go ahead and, Mr.  
8 Hollon has a concluding statement, some testimony with  
9 respect to the emergency issue.

10 JUDGE BAKER: All right.

11 MR. BESHORE: We will handle that separately,  
12 if it works and just stick with, with testimony in  
13 rebuttal on Proposal 6 now.

14 JUDGE BAKER: Very well.

15 MR. BESHORE: And then come back with --

16 JUDGE BAKER: All right. Let me ask, Mr. Lee,  
17 did you have additional testimony?

18 MR. LEE: I need to correct four prices in the  
19 exhibit.

20 JUDGE BAKER: All right.

21 MR. LEE: I did have some incorrect  
22 information.

23 JUDGE BAKER: Well --

24 MR. LEE: It will take two minutes.

25 JUDGE BAKER: All right. Well, then, what,

1 Mr. Beshore, right now you want to hear testimony  
2 relative to Proposal 6, is that right?

3 MR. BESHORE: Yes, let's leave it at that and  
4 Mr. Hollon will be available for cross examination on  
5 his testimony on Proposal 6.

6 JUDGE BAKER: All right. Now I know that  
7 someone wants to give testimony in opposition to  
8 Proposal 6, and you can do it as soon as Mr. Hollon  
9 leaves, but do you have any questions of him? Would  
10 you like to question him at this time?

11 MR. OLSEN: Yes, Your Honor. I have one  
12 question of Mr. Hollon.

13 JUDGE BAKER: Thank you.

14 CROSS EXAMINATION

15 BY MR. OLSEN

16 Q My name is Brad Olsen from Leprino Food  
17 Company.

18 Mr. Hollon, I have just one question. And I  
19 am looking at Table 4, page one of two, and I note and  
20 I think they all did this in terms of stopping in  
21 September, and I was trying to do the math, but I can't  
22 do math that fast. Do you happen to have the October  
23 data? Do you have this chart done showing the October  
24 data and the impacts on your --

25 A We don't have an October blend price. I

1 don't have one done yet. It was the timing of the  
2 hearing and that came out Monday or Tuesday. So, no, I  
3 have no October data.

4 Q Okay.

5 A It is readily available by now, but I had  
6 none when I did this.

7 Q Well, I understand. And so the question is  
8 how October data flows through in your chart, it is  
9 available, you haven't factored it in yet.

10 A That is right.

11 Q Because you have been at the hearing.

12 A That is right.

13 MR. OLSEN: I understand.

14 JUDGE BAKER: Very well. Thank you. Are  
15 there other questions of Mr. Hollon relative to  
16 Proposal 6? Yes, Ms. Brenner.

17 CROSS EXAMINATION

18 BY MS. BRENNER:

19 Q Mr. Hollon, on your Exhibit 25, Table 1, you  
20 have it separated into two sections. The first one is  
21 billing to producer. What is, are you billing  
22 producers for something?

23 A I probably got that labeled wrong. I think  
24 that is the billing to the handler.

25 Q For?

1           A     Milk sold.

2           Q     For milk sold.

3                     It is not --

4           A     Wait, they are reversed. Let me think, 26,  
5     yes that would be payment to producer.

6           Q     Okay. And the headings right below that are  
7     advance date and advance rate. What are these in  
8     advanced of?

9           A     What are they in advanced of or what --

10          Q     What are they, what do they perceive?

11          A     They are a payment in advance of the final  
12     payment. The dairy farmers out 30 days for and in some  
13     cases 45 days, so it just makes the payment to bridge  
14     that gap to provide some funds before the final payment  
15     is due. And the final payment represents the total  
16     payment for milk and this would represent a partial  
17     payment for the milk that has been sold already.

18          Q     Okay. There is no sense in which producers  
19     are getting money for milk they haven't delivered yet.

20          A     No, there is not.

21          Q     And the order --

22          A     It certainly looks like that, but no, there  
23     is not.

24          Q     The order refers to this rather than advanced  
25     as a partial.

1           A     That is correct.

2           Q     Okay. So, if the heading on billing to  
3 producer, which should have been payment to producers,  
4 if we have got that correct, is the one payment to  
5 cooperative correct at this point?

6           A     I think so.

7           MS. BRENNER: Okay. Thank you, that is all I  
8 have.

9           THE WITNESS: Your Honor, I don't think I am  
10 going to use this again, but, maybe I will get it right  
11 if it did it a fourth time.

12          MS. BRENNER: If at first you don't succeed.

13          THE WITNESS: I am proof of that, aren't I?

14          JUDGE BAKER: Are there other questions for  
15 Mr. Hollon? There are none.

16          Very well. Thank you very much.

17          (Whereupon, the witness was excused.)

18          JUDGE BAKER: Now we will hear those who are  
19 opposed to Proposal 6.

20          MR. BESHORE: May we move admission of  
21 Exhibits 24 and 25.

22          JUDGE BAKER: Very well. Are there any  
23 questions or objections with respect to 24 and 25?  
24 Said exhibits are admitted and received into evidence  
25 without objection.

1

2

3

(The documents referred to,  
having been previously marked  
as Exhibit 24 and 35  
were received in evidence.)

4

5

6

7

MR. BESHORE: I am sorry, was 23 admitted.

8

JUDGE BAKER: Yes, 23 has been admitted.

9

MR. BESHORE: Okay. Thank you.

10

(Pause.)

11

Whereupon,

12

DUANE BANDEROB

13

having been first duly sworn, was called as a witness

14

herein and was examined and testified as follows:

15

DIRECT EXAMINATION

16

BY MR. OLSEN

17

Q Mr. Banderob, you are here to testify today  
in today's hearing. And, you know, a couple of things.

18

19

You have a prepared statement with you today.

20

A Yes.

21

MR. OLSEN: Okay. And what I would like is  
to mark his statement as composite exhibit, and I have  
lost track of the numbers.

22

23

24

JUDGE BAKER: It would be 26.

25

MR. OLSEN: Twenty six.

1 (The document referred to  
2 was marked for identification  
3 as Exhibit 26.)

4 BY MR. OLSEN:

5 Q At the back of your prepared statement are  
6 two exhibits, which you will be talking about shortly,  
7 and those would be part then of this composite Exhibit  
8 number 26.

9 Mr. Banderob, if you would go ahead and start  
10 with the first part of your prepared statement.

11 A I am Duane Banderob, Dairy Economist for the  
12 Leprino Foods Company, the position I have held for the  
13 past two years. My employment with Leprino was  
14 preceded by work in a milk processing plant as well as  
15 completing degrees in Dairy Science at the California  
16 Polytechnic State University at San Luis Obispo and  
17 Agriculture Economics at Michigan State University.

18 Q Mr. Banderob, in your experience, you know,  
19 in working with Leprino Foods Company and throughout  
20 your education, have you had an opportunity to prepare  
21 testimony for federal order hearings such as this?

22 A Yes.

23 Q And your degree is as a Masters of Science  
24 and Agriculture Economics?

25 A Yes.

1 Q Okay.

2 MR. OLSEN: To spite Mr. Banderob's youthful  
3 appearance, I would ask that he be qualified as an  
4 expert, Your Honor.

5 JUDGE BAKER: Are there any questions or  
6 objections? The witness will be so regarded.

7 BY MR. OLSEN

8 Q If you would go ahead and complete your  
9 prepared statement.

10 A Leprino is headquartered in Denver, Colorado.  
11 Our business address is 1830 West 38<sup>th</sup> Avenue, Denver,  
12 Colorado 80211-2200. Leprino operates 11 plants in the  
13 United States, manufacturing mozzarella cheese and whey  
14 products domestically and marketing our products both  
15 domestically and internationally. Our cheese is  
16 primarily used as an ingredient by major pizza chains,  
17 independent pizza restaurants as well as many of the  
18 nation's leading food companies.

19 Leprino operates four manufacturing  
20 facilities who receive milk regulated by the Central  
21 Order. These facilities are located Fort Morgan,  
22 Colorado, and Dodge Hardington and Ventura, Nebraska.

23 I am testifying today in opposition to  
24 Proposal number 6. The proposal to increase the  
25 partial payment rate from the lowest class price for

1 the preceding month to 110 percent as noticed or 105  
2 percent as testified of that price.

3 I will make a brief departure from the  
4 prepared statement. The prepared statement will  
5 reference the attachments, the numbers that are not in  
6 parenthesis is in evidence against Proposal number 6 as  
7 noticed. The numbers that are in parenthesis refer to  
8 Proposal number 6 as testified to. So, I will try to  
9 make that clear in the testimony going forward.

10 The proponents of Proposal 6 point to  
11 producer cash flow challenges that exist due to this,  
12 to the disparity between the level of the partial  
13 payment and the level of the final payment. We do not  
14 contest this concern regarding producer cash flow.  
15 However, the root cause of this price, of the price  
16 disparity between the partial payment and the final  
17 payment is the lack of blending the higher values of  
18 milk into the partial payment. The proposed remedy  
19 does not address this issue, but rather simply  
20 transfers the cash flow burden to processors. The  
21 result of the proposal is the manufacturers of products  
22 in the lowest class and in many months lowest two  
23 classes, will pay more than the classified value of  
24 their milk in a partial payment. This violates the  
25 pricing intent of the orders.

1           Additionally, the application of the  
2           proponents' logic across several orders results  
3           inequities in that form of different partial payments  
4           amongst competitors in manufactured product markets.

5           The source of the difference is between the  
6           partial payment and the final payment is twofold.  
7           First, the partial payment is based on the prior months  
8           rather than the current month's market value.

9           Second, the partial payment does not caption  
10          the incremental value contributed to the final payment  
11          by utilizations with higher classified values than the  
12          lowest class price. This incremental value is  
13          captioned for the final payment through the pooling  
14          process administered by the market administrator.

15          The first source of difference, the use of  
16          the prior month rather than the current month market  
17          values in setting the minimum partial payment is  
18          generally not referenced as a concern since the  
19          resulting partial payment is sometimes above and  
20          sometimes below current month market values. To the  
21          extent that a concern exists, the processor obligation  
22          for the partial payment could be updated to current  
23          month market values. Since not all market values for  
24          the full month are known at the time of the partial  
25          payment, the partial payment could be calculated based

1 on the factors for that portion of the month for which  
2 the data has been published prior to the partial  
3 payment deadline. This additional calculation and  
4 announcement would require additional administration  
5 due to the additional price calculations and the  
6 necessary communication to market participants.

7 The second and more important source of  
8 difference between the partial payment and final  
9 payment is the absence of contribution of the  
10 incremental value from the higher classes of milk in  
11 the partial payment. Although they have not explicitly  
12 characterized it as such, this appears to be a primary  
13 concern to the proponents of Proposal 6.

14 Analysis: Proposal 6 fails to address either  
15 of the sources of differences between the partial and  
16 final payment prices. The proposal does not result in  
17 an increase correlation between the partial payment and  
18 the final payment. Analysis of the period January 2000  
19 through October 2001 is shown in attachment one, based  
20 on the Proposal 6 as noticed and shown in attachment  
21 two for Proposal 6 as testified to.

22 Key observations over this period are that  
23 had Proposal 6 been in place the partial payment is  
24 increased by a \$1.11 per hundred weight, at 110 percent  
25 or 56 per 100 weight at 105 percent. Which reduces the

1 average of the partial payment relative to the blend  
2 price from \$1.59 to 48 cents at 110 percent or a \$1.04  
3 per hundred weight at 105 percent. However, the  
4 monthly differences between the partial payment and  
5 blend price range from an underpayment of \$1.95 at 110  
6 percent or 2.38 at 105 percent to an overpayment of  
7 2.23 at 100 percent or \$1.45 at 105 percent. A clear  
8 indication that the proposal does not emulate the final  
9 payment.

10 The standard deviation of the differences  
11 between the partial payment and the blend price also  
12 increases from 78 cents under the current system to 89  
13 cents at 110 percent or 83 cents per hundred weight at  
14 105 percent under Proposal 6.

15 The proposal violates two basic tenants of  
16 pricing milk manufactured in the Class III and IV  
17 products. These are that federal marketing orders  
18 establish minimum prices and that since manufactured  
19 products are marketed nationally, the minimum regulated  
20 price level for Classes III and IV are consistent  
21 across all orders. Proposal 6 violates the minimum  
22 pricing concept by setting regulated milk prices for  
23 the partial payment above the equivalent value, above  
24 the equivalent market value for Classes III and IV.  
25 For example, during the period from January 2000

1 through September 2001, the minimum partial payment  
2 obligation would have exceeded the Class III price by  
3 73 cents at 110 percent or 19 cents per hundred weight  
4 at 105 percent on average.

5 The proponents of Proposal 6 are advocating  
6 similar provisions in other orders. However, the fact  
7 of those being proposed is different for different  
8 orders, resulting in disparate economic positions for  
9 competing Classes III and IV manufacturers located in  
10 different orders. For example, the proposed factor in  
11 the Upper Midwest order is 103 percent, which would  
12 result in an average partial payment price that is  
13 about 78 cents at 110 percent or 22 cents at a 105  
14 percent, lower than the proposed, proposed for the  
15 Central Order.

16 The logical conclusion from the above  
17 analysis is that the most appropriate approach to  
18 address the root cause of the disparity between the  
19 level of the partial and final payment is to implement  
20 a similar minimum payment in pooling structure for the  
21 partial payment that currently exists for the final  
22 payment. Although this is the logical remedy, I am not  
23 proposing that it be adopted at this time. This remedy  
24 would require significant additional administration in  
25 terms of plant reporting, report analysis, pool

1 calculation and movement of funds into and out of the  
2 pool in the current system of minimum payment at the  
3 lowest class price.

4 Additionally, such an approach would  
5 significantly impact many handlers who are not  
6 participating in the hearing today since the concept  
7 was not properly noticed. A more comprehensive review  
8 of all provisions of the order that would be impacted  
9 and the associated impact would also be necessary prior  
10 to serious consideration of such an approach.

11 Although we are sympathetic to the issue of  
12 concern that is cited by proponents of Proposal 6, we  
13 do not agree that the proposed solution is appropriate  
14 or equitable. Although I have outlined a more  
15 appropriate approach to addressing the concern, that  
16 approach should not be considered a proposal as part of  
17 this rule making process since it has not been properly  
18 noticed. USDA should reject Proposal 6 since it does  
19 not appropriately address the issue it preports to  
20 remedy. And it violates the minimum pricing concepts  
21 for manufacturers.

22 BY MR. OLSEN

23 Q Mr. Banderob, why don't you take us through  
24 the two attachments that you got along the lines of the  
25 way that Mr. Hollon did earlier to give us all sort of

1 a sense of how these exhibits or attachments work  
2 together.

3 A The attachments are similar just under, as I  
4 mentioned before, attachment one is, compares the  
5 current partial payment scenario to that which is  
6 noticed, the notice Proposal 6 at a 110 percent.  
7 Attachment two compares the current partial payment  
8 system to the testified to Proposal 6 at 105 percent.  
9 So, I will just walk through Attachment two, since that  
10 seems to be the more germane proposal at this time.

11 Essentially we have months going down  
12 starting in January looking at Central Order reform,  
13 using the prior month Class III price and prior month  
14 Class IV price. The column labeled A is the current  
15 partial payment price, which is defined as the lowest  
16 of those two prices. The Proposal 6 partial payment  
17 price simply increases that lowest payment price by  
18 five percent. There is a difference calculated, the  
19 column labeled C is essential order blend price. The  
20 next column A less C is the current partial payment  
21 price, less the Central 1 price and B less C is the  
22 same, same mechanics.

23 Q I know, Mr. Banderob, I had asked Mr. Hollon  
24 if he had any October data and I was trying to do his  
25 calculation and that obviously didn't need to be done,

1 because it looks like you have done some of the  
2 calculation here. Can you just explain the import of  
3 what has happened in October as it relates to the  
4 trend, if you will.

5 A Yes. Prices came down between September and  
6 October. You can see in the column labeled C, Central  
7 Order Blend Price, the price in September 2001 was  
8 16.56, that fell to 14.92. The applicable partial  
9 payment price for that month was 15.59. So, in fact,  
10 in October the partial payment price exceeded the  
11 Central Order Blend price. And I think if we look at  
12 the tables that Mr. Hollon submitted, it would be 104  
13 percent of the partial payment price as related to the  
14 Central Order Blend price.

15 Q Okay. On a related concept here, then, Mr.  
16 Hollon, you know, testified to a relationship between  
17 the pre payment price and the blend price, now I have  
18 lost track of what Mr. Hollon labels in that regard,  
19 but, anyway, the pre payment price and the blend price  
20 and that there is a trend in say the most recent 20  
21 months, which is concerning, let me ask you this. I  
22 mean, do you have any concerns about using these  
23 periods for comparison?

24 A Yes, I do. I think, using as a baseline date  
25 1997 through the end of 2000 is quite appropriate. Our

1 concern rests with comparing those three years of data  
2 to the period January 2000 to January, to September of  
3 2001. And the reason for that is very simple because  
4 between January 2000 and September 2001, market seemed  
5 to be rising markets, trending higher. And in such a  
6 scenario the partial payment price will always trail  
7 the blend price. If you look at the period 1997 to  
8 2000, about half of the months markets are rising, half  
9 of the months markets are trending downwards. When you  
10 look at the period January 2000 through September 2001,  
11 it is about 70, almost 70 percent of the time month to  
12 month is increasing about 30 percent, it is trending  
13 downwards. So, we would think that if we can compare  
14 periods that have about the same percentages of upward  
15 movement and downward movement, we might discover that  
16 the 86 percent of the partial payment price to the  
17 blend price, might actually be higher because currently  
18 that could be unstated because we don't have the full  
19 effect of an equal amount of time period of following  
20 markets.

21 Q And that is because in that period there was  
22 predominantly a rising market, so if I am tracking with  
23 you here, in the following market, we would, you would  
24 expect the spread between the pre payment and the final  
25 payment, that difference, that spread would be reduced,

1 and in fact, you may also have overpayments on the  
2 other side, is that correct?

3 A That is correct. And that is what happened  
4 in October.

5 Q Okay. And so, and is that part of the  
6 relationship that hasn't been reflected since the  
7 Federal Order Reform in that 20 month period?

8 A That is what we are concerned has not been  
9 reflected, yes.

10 Q Now, earlier and I forgot the gentleman's  
11 name, one of the DFA members testified that Central  
12 Order Reform, the advanced price has been lowered than  
13 what he had historically seen. He didn't have an  
14 amount of percentage, but he said it was something that  
15 was, he noticed. Do you recall that testimony?

16 A Yes.

17 Q What do you believe was the cause of those  
18 lower prices that he is referring to?

19 A I think one of the causes might be the  
20 phenomena of using the lower of and in, you can look in  
21 December of 2000 on Attachment two, the prior month  
22 Class III price is 8.57. That is primarily driven off  
23 cheese prices, which were the lowest since, I believe,  
24 the late 1970s. So, markets were extremely depressed  
25 and in some of this time period compared to recent

1 history before Order Reform.

2 Q Okay. And focusing on that spread just a  
3 little bit, I believe you are referring to the higher  
4 of, that is applied to the blend price?

5 A Yes.

6 Q And then the lower of concept is applied to  
7 the pre payment or advanced price.

8 A Yes.

9 Q Okay. Are there any other reasons why we  
10 might be looking at a spread that has increased over  
11 this 20 month. We have talked about a couple of them,  
12 is there anything else you can think of?

13 A I think there might be another institutional  
14 factor, I guess, you can say, is that because they used  
15 the higher of and there is a Government support  
16 program, the Government support price were powder  
17 between January of 2000 and May 2001, was higher than  
18 market clearing prices. Because the Class I and Class  
19 II prices tied directly to the Class IV price, we think  
20 there might be some distortions again in this data  
21 since January 2000, because the blend price might have  
22 been higher because of the direct support by the  
23 Government support price for powder. Since May the  
24 Government support price for powder was reduced and now  
25 we are seeing that three and four are becoming more in

1 line than what they had been prior to.

2 Q Okay. So, so, in your opinion you are seeing  
3 less market distortion than since that May 2001 time  
4 frame.

5 A Yes.

6 JUDGE BAKER: This is a good time for our  
7 afternoon recess.

8 MR. OLSEN: Yes, Your Honor.

9 JUDGE BAKER: We will take a 15 minute recess.  
10 (Whereupon, a short recess was taken.)

11 JUDGE BAKER: We are back in order after our  
12 midday recess.

13 Mr. Banderob, you are responding to questions  
14 from your counsel.

15 BY MR. OLSEN:

16 Q Mr. Banderob, I just have one more question.  
17 And that is if you turn to Attachments one and more  
18 applicably Attachment two, can you please explain some  
19 of the bolded numbers there and the import of them?

20 A Yes. In the column labeled A Less C, it  
21 compares the current partial payment price to the blend  
22 price. All simply the bolded numbers are, so in that  
23 instance in December of 2000, negative 2.81 and in  
24 October 2001 positive 67 cents. That is just the range  
25 of those differences. And then again in column B less

1 C, the same notion applies, the range for the Proposal  
2 6 pre payment price to the blend price, ranges from an  
3 underpayment of \$2.38 per hundred weight to an  
4 overpayment in October of 2001 to, of \$1.45 per hundred  
5 weight. The significance or the import of these two  
6 columns is to just simply point out that the range of  
7 differences between the partial payment price and the  
8 blend price increases under Proposal 6. So, for  
9 instance, if you look at the range from the lowest  
10 underpayment or the greatest underpayment to the  
11 overpayment in comparing the current price to the blend  
12 price, that is a range of \$3.48. When you look at it,  
13 that scenario under Proposal 6, the range is \$3.83.

14 MR. OLSEN: Okay. And before I step away  
15 here, I would ask that Exhibit number 26 be admitted,  
16 Your Honor.

17 JUDGE BAKER: Very well. Are there any  
18 questions or objections? Hearing none, Exhibit 26 is  
19 admitted and received into evidence.

20 (The document referred to,  
21 having been previously marked  
22 as Exhibit 26  
23 was received in evidence.)

24 MR. OLSEN: Mr. Banderob is now available for  
25 cross examination, Your Honor.

1                   JUDGE BAKER: Very well. Are there any  
2 questions? Yes, Mr. Beshore.

3                   MR. BESHORE: Just a couple of questions, Mr.  
4 Banderob.

5                                   CROSS EXAMINATION

6                                   BY MR. BESHORE:

7                   Q     With respect to your comments on the concept  
8 or basic tenant of uniform minimum manufacturing prices  
9 in Federal Milk Orders, you would agree, would you not,  
10 that the present systems of payments, requirements for  
11 partial payments in Federal Orders as depicted on  
12 Exhibit 25, Table 1, which Mr. Hollon presented, showed  
13 differences from order to order, present, different  
14 rates of payment being required, correct?

15                   A     Yes.

16                   Q     And, in fact, the rates of payment required  
17 do not relate to the utilization of the handler, Class  
18 III, Class IV, Class I or Class II. They are just, they  
19 are simply partial payments regardless of utilization,  
20 correct?

21                   A     Correct.

22                   Q     Okay. So, they are not really establishing  
23 any payment rate relating to the handlers' utilization,  
24 they are simply a partial payment for milk received by  
25 the handler, correct?

1           A     Correct.

2           Q     Okay. Now, by the same, by the same token,  
3     regardless of what order the handler is in, but taking  
4     the Central Order since that is what we are talking  
5     about, at the time that the partial payment is required  
6     of any handler, such as or any purchaser of milk, such  
7     as Leprino, you already have received and utilized at  
8     least 24 days worth of milk from the producers,  
9     correct?

10          A     Yes, and I think the partial payment is  
11     paying for the milk received, the first through 15,  
12     although we do have, yes, an additional few days of  
13     milk on hand.

14          Q     Well, it is based on the volumes delivered  
15     during the first 15 days of the month, correct?

16          A     Yes.

17          Q     Okay. So, that, no matter what, what rate we  
18     have specified here, it is, the requirement is to make  
19     a payment to the producer for less than the value of  
20     product already received and being utilized.

21          A     It depends on where the markets might go,  
22     because in the scenario of October, we would make a  
23     partial pre payment at a value higher than what the  
24     Class III price for October was.

25          Q     Right. But, you are paying it on 15 days

1 volume at a time when you already have received 24 days  
2 worth of milk.

3 A Right. And those extra days are chewed up at  
4 the time of the settlement.

5 Q So, that even in those unusual situations  
6 where, you know, where the rate might happen to be  
7 higher than the final class price for the month, it is  
8 still not more than the value of the milk that has been  
9 received by that point in time.

10 A Probably.

11 Q Okay. And when you look at it and think  
12 about it that way, the whole issue here really is what  
13 partial, what rate of payment for partial value of milk  
14 received by that date should be made to the producer  
15 for the product that he has already delivered to the  
16 handler, whether it be a cheese manufacturer or a  
17 butter powder manufacturer or a fluid milk plant,  
18 correct?

19 A Correct.

20 Q Okay. In some periods of time, such as  
21 actually the present month, I guess, talking about  
22 November, now, when the Class IV price is less than the  
23 Class III price, which it is or was in October, correct  
24 or will be, let's see how does this. Anyway, right  
25 now, the Class IV price is less than the Class III

1 price, correct, based on the present commodity market?

2 A Yes.

3 Q Okay. Now in that case, the, when the partial  
4 payment raised based on the Class IV price, the Class  
5 III manufacturer has the benefit of that additional  
6 difference in value, of his use value.

7 A Yes.

8 Q Okay.

9 MR. BESHORE: That is all I have.

10 JUDGE BAKER: Thank you, Mr. Beshore. Are  
11 there other questions? Ms. Brenner?

12 CROSS EXAMINATION

13 BY MS. BRENNER:

14 Q Mr. Banderob, in what other federal orders  
15 does Leprino have cheese plants?

16 A We have plants regulated by the Mideast,  
17 Northeast, Southwest.

18 Q That is --

19 A And Central, yes, I am sorry.

20 Q Okay. Do you have any competitors in the  
21 Arizona, Las Vegas or Western borders?

22 A It depends on how you define competitors.  
23 Yes, there are cheese makers in other orders that we do  
24 not operate in.

25 Q Do they make mozzarella cheese?

1           A     Yes.

2           Q     They do.  And some of them are paying 130 or  
3     120 percent of the previous month's lowest class price?

4           A     Yes.

5           Q     As a partial payment.

6           A     Mmhuhm.

7           Q     Generally how long does it take Leprino to  
8     turn a tanker load of milk into cheese?

9           A     Not very long.  There are some technology  
10    issues that I probably don't want to get into.

11          Q     Well, are we talking about a day --

12          A     Yes, a day.  A day.  A day.

13          Q     And then how long does Leprino generally keep  
14    that cheese before it ships it out?

15          A     That ranges, depending on the product that we  
16    would make.

17          Q     But, it is not something really aged --

18          A     No.

19          Q     And then how long do you generally wait  
20    before you are paid for the cheese that you ship out?

21          A     Unfortunately the marketing sales, they are  
22    couple floors away from where I work, so I do not, I do  
23    not know.  It is not immediate.

24          Q     Okay.  Well, no, is it a month and a half, do  
25    you think or --

1           A     I can't speak to that.

2           Q     But, this \$1.45 that the proposed partial  
3 payment would exceed the blend price, I guess that is  
4 what that represents there.

5           A     Yes, in October of 2001.

6           Q     And the blend price being 14.92.

7           A     Yes.

8           Q     So, it is about 10 percent or in terms of a  
9 half of month's production a day and a half of milk  
10 production more than the first 15 days.

11          A     Yes.

12                   MS. BRENNER: Okay. That is all I have.

13                   JUDGE BAKER: Thank you, Ms. Brenner. Are  
14 there other questions? There appear to be none. Thank  
15 you very much.

16                   THE WITNESS: Thank you.

17                   (Whereupon, the witness was excused.)

18                   JUDGE BAKER: Mr. Lee, I gather you wish to  
19 retake the stand.

20                   THE WITNESS: Very briefly, Your Honor.

21                   JUDGE BAKER: Very well. You are still under  
22 oath.

23

24

25

1 Whereupon,

2

GARY LEE

3 having been previously duly sworn, was recalled as a  
4 witness herein and was examined and further testified  
5 as follows:

6

DIRECT EXAMINATION

7

BY MR. BESHORE:

8

Q Mr. Lee, do you have some corrections to a  
9 couple of the numbers that you presented in Exhibit 16?

10

A Yes.

11

Q Could you explain what those are?

12

A Okay. In reference to Exhibit 16, Table 2,  
13 Mr. Freely from the Order 5 Market Administrator's  
14 office checked my numbers and found the first four  
15 prices for 2000, January, February, March and April,  
16 Zone, Order 5, Zone back to Evansville, Indiana,  
17 Evansville is a minus 90 off the base zone, Mueller  
18 County, North Carolina. I had subtracted a \$1.80  
19 instead of 90 cents and so I actually had understated  
20 the price zone back to back to Evansville by 90 cents  
21 per hundred in each of those four months. And then the  
22 resulting difference versus Order 32.

23

Q So could you indicate what those numbers  
24 should be?

25

A For January 2000 the new price should be

1       \$12.42 instead of \$11.52 and the difference \$1.19  
2       instead of 29 cents. For February, \$12.23 instead of  
3       \$11.33, the difference \$1.23 instead of 33. For March,  
4       \$12.25 instead of \$11.35, the difference \$1.34 instead  
5       of 44. And finally April, \$12.33 instead of \$11.43,  
6       the difference \$1.49 instead of 59.

7                JUDGE BAKER: Very well. Thank you very much.  
8                (Whereupon, the witness was excused.)

9                MR. BESHORE: Now, Mr. Hollon is prepared to  
10       present his concluding testimony and testimony with  
11       respect to the emergency issue.

12               JUDGE BAKER: Very well, Mr. Beshore. Mr.  
13       Hollon, you are still under oath.  
14       Whereupon,

15                               ELVIN HOLLON  
16       having been first duly sworn, was called as a witness  
17       herein and was examined and testified as follows:

18                               DIRECT EXAMINATION

19                               BY MR. BESHORE

20               Q       Mr. Hollon has a prepared statement with  
21       respect to these points, which has been distributed or  
22       made available. I do not propose to make it an  
23       exhibit. Before he proceeds with that statement, I  
24       would like to address one question to him with respect  
25       to testimony that has come up since the last time he

1 was up here. And this simply relates to the size of  
2 DFA producers in the order that there has been comments  
3 about the size, average size of producers of other  
4 organizations.

5 Mr. Hollon, can you tell us whether DFA  
6 producers in this area qualify as small businesses?

7 A In the main, between 70, 75 percent of the  
8 DFA member farms would qualify for that designation and  
9 in the Central Order, I am sorry, yes, in the Central  
10 Order and in the Upper Midwest area in general, even  
11 greater numbers because the farms are smaller.

12 Q Seventy, 75 is a DFA nationwide percentage.

13 A That is correct.

14 Q And the average producer, you know, in this  
15 part of country is smaller than average.

16 A Smaller than the average. So the higher  
17 concentration would be in this general geographic  
18 areas.

19 Q Okay. With that, would you proceed with your  
20 testimony with respect to the topics that I mentioned.

21 A Summaries and Conclusions. Data presented in  
22 this record indicates that milk from distant locations  
23 are being pooled on Federal Order 32 in increasing  
24 volumes. This milk volume reduces the blend price to  
25 local suppliers. Additional evidence shows that due to

1 distance and economic return this milk would never  
2 supply the market regularly. Clearly additional  
3 definition of the appropriate performance requirements  
4 for Order 32 is needed. DFA and the other proponents  
5 are experiencing difficulty in supply fluid handlers in  
6 the marketplace with milk. The returns generated by  
7 the Federal Order 32 blend price are not sufficient to  
8 maintain a milk supply in certain areas of the order.  
9 It is not sufficient to attract milk to certain Order  
10 32 handlers where producers have the option of  
11 marketing their milk to Order 5 or 7 handlers. It will  
12 not attract milk from other order areas to local  
13 handlers in Order 32. In some months it will barely  
14 maintain enough of it to keep milk supplies from moving  
15 to Order 126 from milk sheds in Oklahoma.

16 Testimony from day to day operatives in the  
17 market and from bottling handlers in the market  
18 conclude that the dramatic increase in market reserve  
19 supplies is far beyond any level required to service  
20 the market. We have demonstrated on the basis of  
21 conclusions and the final rule that milk such as these  
22 supplies generally and in this case, from these  
23 specific locations, was never intended to be a part of  
24 the Federal Order 32 marketing area. Geographically it  
25 was never considered to be a part of the supply area

1 and from a performance perspective it cannot meet the  
2 requirements.

3 The pooling provisions that allow this  
4 distant milk to share in the blend price should be  
5 corrected. Direct calculations made in the reform  
6 process reported an estimated Class I utilization for  
7 the proposed order of 50.1 percent. Clearly the  
8 expectation of the Secretary was that the reform  
9 provisions would function together in a fashion that  
10 would yield a 50 percent Class I market. In no way did  
11 the reform provisions contemplate the current practice  
12 of open pooling. Furthermore, the current practices of  
13 open pooling operated in conflict with the pricing  
14 model that generated the existing pricing services.

15 The solutions we propose are sound and found  
16 in other sections of the order system and provide a  
17 rationale that can be consistently used in and with  
18 other orders.

19 Finally, we have demonstrated that the  
20 current provisions that set the advanced price paid to  
21 producers needs modifications.

22 Comments on the emergency status: Regarding  
23 the issue of an emergency decision we have the  
24 following comments:

25 The problems being discussed at this hearing

1 are not unique to the Central Marketing area. The  
2 problem when converted to cents per hundred weight of  
3 the blend price is milk from distant areas, taking  
4 advantage of open pooling type provisions and reducing  
5 the blend price for local producers who regularly serve  
6 the market. The emergency is just as great in Ohio or  
7 Michigan, Indiana or Wisconsin and Washington or  
8 Oregon. DFA has asked for emergency decisions in  
9 hearing requests in the Upper Midwest and Mideast  
10 hearings and will seek similar treatment in the  
11 upcoming Pacific Northwest Federal Order.

12 We cannot see the fairness in a decision that  
13 favors one geographic area of the Federal Order System  
14 over another order area, where the problem is the same  
15 issue, the application of pooling provisions. What is  
16 important is that the decisions in each order area be  
17 either announced over a relatively narrow time frame or  
18 get implemented at the same time. If not, the problem  
19 that may get corrected in Wisconsin or Minnesota, will  
20 just mitigate to Missouri. The likelihood will be that  
21 while there are several hearings, the central focus of  
22 each will be similar. The Dairy Division should be  
23 able to process the hearings along similar tracks and  
24 produce decisions that look reasonably similar. This  
25 should speed the process.

1           We expect the prices will decline  
2 significantly by the first quarter of 2002. That drop  
3 will be made much worse for the every day suppliers of  
4 Order 32 if the changes we propose are not  
5 institutioned.

6           And finally for the purpose of voting on the  
7 record, we would expect the vote month to be a shipping  
8 period, September through November.

9           Q     Are there any loose ends we need to tie up?

10          A     I am tied.

11          MR. BESHORE: Okay. Mr. Hollon is available  
12 for cross examination.

13          JUDGE BAKER: Are there any questions of Mr.  
14 Hollon? Mr. Cooper?

15          MR. COOPER: I have one question.

16                        CROSS EXAMINATION

17          BY MR. COOPER:

18          Q     What is your position on Proposal number 8?

19          A     We think that Proposal 7 is a better  
20 alternative than the reasons espoused in Proposal 8 and  
21 we outlined all those alternatives in our testimony.  
22 So we would oppose Proposal 8.

23          JUDGE BAKER: Thank you, Mr. Cooper. Are  
24 there any other questions for Mr. Hollon? Let the  
25 record reflect that there are none.

1                   (Whereupon, the witness was excused.)

2                   JUDGE BAKER: As previously announced, this is  
3 a public hearing which the public can participate and  
4 all interested parties have the opportunity to give  
5 testimony or otherwise offer evidence. I shall now go  
6 to each of the proposals and ask if there is anyone  
7 here who wishes to give testimony or evidence or  
8 otherwise comment upon said proposal.

9                   Proposal number 1? Let the record reflect  
10 there is no response.

11                  Proposal number 2? Let the record reflect  
12 there is no response.

13                  Proposal number 3? Let the record reflect  
14 there is no response.

15                  Proposal number 4? Let the record reflect  
16 there is no response.

17                  Proposal number 5? Let the record reflect  
18 there is no response.

19                  Proposal number 6? Let the record reflect  
20 there is no response.

21                  Proposal number 7? Let the record reflect  
22 there is no response.

23                  Proposal number 8? Let the record reflect  
24 there is no response.

25                  Proposal number 9? The record will reflect

1 there is no response.

2 With respect to Proposal number 10, Mr.  
3 Cooper, do you have anything you wish to say?

4 MR. COOPER: This is a normal proposal that is  
5 in all order, market order hearings, which indicates  
6 that the Secretary may need to make incidental and  
7 conforming changes to other provisions as a result of  
8 whatever decision he issues and whatever provisions he  
9 may adopt. And there is nothing or she may adopt in  
10 this case, and there is no testimony to be given on  
11 this particular proposal.

12 JUDGE BAKER: Very well. Thank you.

13 Now, all parties, whether they have been at  
14 this hearing or not have the opportunity to submit  
15 briefs, including proposed findings of fact and  
16 conclusions. I shall now ask for suggestions as to two  
17 dates. One, the date for the submission of proposed  
18 findings of fact. Does anyone have a suggestion as to  
19 that?

20 MR. VETNE: What is the other subject?

21 JUDGE BAKER: The second one is the date for  
22 the submission of briefs, proposed findings of fact and  
23 briefs. I misstated that, Mr. Vetne. After all this  
24 time you caught me on something here. I should have  
25 said the first date is for the submission of proposed

1 corrections to the transcript. Is there a suggestion  
2 as to proposed corrections to the transcript?

3 MR. VETNE: Could we have a representation  
4 from the Department as to when we might reasonably  
5 expect the transcript?

6 MR. COOPER: Well, it is a five day order this  
7 time and the hearing reporter agrees that it is a five  
8 day order, like the last reporter.

9 MS. BRENNER: Well, being realistic and  
10 realizing that next Thursday is Thanksgiving, I think  
11 the earliest we could probably expect the record would  
12 be November 26. Which is a Monday.

13 MR. ENGLISH: Why don't we assume because it  
14 is the Monday after Thanksgiving, that that is --

15 JUDGE BAKER: And when would you suggest a  
16 date for the submission of proposed corrections.

17 MS. BRENNER: The five days is over before, I  
18 mean, that ends the day before Thanksgiving.

19 MR. ENGLISH: Okay. Okay.

20 MR. VETNE: And when would we might have it,  
21 from getting the transcript and post hearing  
22 transcript?

23 MS. BRENNER: Well, we can post the  
24 transcript, I believe the same day we get it. The  
25 exhibits take another couple of, Gino, what is your

1 experience, another couple of days?

2 MR. VETNE: We are not going to do this --

3 MR. COOPER: What was decided in the central  
4 hearing was that they set a deadline that we would have  
5 the record available up on the Internet and then set so  
6 many days after that for corrections and then so many  
7 days after that for briefs. To the extent that the  
8 record became, was delayed and they would adjust the  
9 all other days --

10 MR. ENGLISH: Well, how long does it take to  
11 get the exhibits.

12 MS. BRENNER: Yes.

13 MR. COOPER: The exhibits, getting the  
14 exhibits, when we receive the transcript, we can  
15 basically put it on the same day, and the exhibits then  
16 to be sent off to a company that we have a contract  
17 with. They have been very, very good about turning it  
18 around in a couple of days, and when that happens.

19 MS. BRENNER: Two days, you think?

20 MR. COOPER: I would say about four days after  
21 receipt of the transcript, at that latest, we can have  
22 it available.

23 MS. BRENNER: It would take four days from the  
24 time we get the transcript to have the exhibits ready  
25 to put on the --

1 MR. ENGLISH: Well, we can do the corrections  
2 to it.

3 MS. BRENNER: Yes.

4 MR. ENGLISH: Corrections of the transcript.

5 MS. BRENNER: Right.

6 MR. ENGLISH: So, why don't we base the  
7 corrections based upon the 26<sup>th</sup>. And the brief based  
8 upon four days later.

9 MR. BESHORE: Well, how about the same time.

10 MR. ENGLISH: Do you remember what they were?  
11 It was one week, wasn't it one week for the --

12 MR. BESHORE: I think it was like two weeks  
13 for the corrections and three weeks for the brief,  
14 after the corrections.

15 MR. ENGLISH: After the corrections. So, it  
16 is a total of five weeks. Yes. So, that would mean --

17 MS. BRENNER: Five weeks? Christmas Day.

18 JUDGE BAKER: Well, if the transcript is going  
19 to be available November 26, could not all the  
20 corrections be in by November 30? No? No, all right.

21 MR. ENGLISH: We have been doing this -- We  
22 have other transcripts to look at. And another hearing  
23 on the fourth of December.

24 JUDGE BAKER: All right, then, then what date  
25 shall we have for the submission of proposed

1 corrections?

2 MR. COOPER: Two weeks after posting. That  
3 would be, you know --

4 JUDGE BAKER: I think we have to go by the  
5 date received by the hearing clerk right now.

6 MS. BRENNER: Well, we probably could set it,  
7 set it to be two weeks after.

8 JUDGE BAKER: All right, what would that be  
9 then?

10 MS. BRENNER: Well, if we assume it would be  
11 posted on the 26, two weeks later would be December 10.

12 JUDGE BAKER: December 10. Is that agreeable  
13 with everyone for the submission of proposed  
14 corrections? Is that all right? Fine.

15 Now, briefs, what would be a good date for  
16 the submission of briefs?

17 MR. VETNE: Sometimes writing briefs, if  
18 reliance is going to be made on corrected transcript.

19 JUDGE BAKER: Right.

20 MR. VETNE: It would be good to know what  
21 other parties have in mind about corrections.

22 JUDGE BAKER: Right.

23 MR. VETNE: I don't know if the Secretary has  
24 authority to request, I know the Counsel sitting here  
25 have been pretty good at exchanging by email proposed

1 corrections as well briefs.

2 JUDGE BAKER: Right.

3 MR. VETNE: And I would request anybody that  
4 has corrections to email them to me. I will give you  
5 my email, if you don't have, so I could work with the  
6 corrective part.

7 JUDGE BAKER: Right.

8 MR. VETNE: There are folks here that might  
9 not, you know, might be in the loop. That is what we  
10 do.

11 JUDGE BAKER: Well, the hearing clerk should  
12 furnish you copies, too. The hearing clerk should  
13 email you or fax you copies.

14 MR. VETNE: They don't. They don't, there is  
15 no service from the hearing clerk, so we have to rely  
16 on each other.

17 MS. BRENNER: We do post the corrections, the  
18 proposed corrections when we, I believe when we get  
19 them from the Judge.

20 JUDGE BAKER: All right.

21 MS. BRENNER: They are proposed at that point,  
22 of course.

23 JUDGE BAKER: If they are submitted to me by  
24 December 10, I have three cases, out of town cases in  
25 December and so, I will send my corrections in, among

1 those three cases while I am out of town. So, it will  
2 be sometime after December 10, maybe December 13 or 14.  
3 And then I will file them with the hearing clerk.

4 (Pause.)

5 MR. ENGLISH: January 7, the briefs, Your  
6 Honor.

7 JUDGE BAKER: January 7 for briefs. All  
8 right.

9 Very well. The record will reflect that  
10 after discussion and agreement it has been agreed that  
11 any proposed corrections to the transcript shall be  
12 submitted to the hearing clerk by December 10, 2001.  
13 And that briefs containing proposed findings of fact,  
14 conclusions and recommendations shall be submitted on  
15 or prior to January 7, 2002.

16 Yes, Mr. Cooper?

17 MR. COOPER: Yes, we had some discussion,  
18 yourself and myself and Ms. Brenner and Judge Hunt  
19 earlier this month about filing by either fax or email  
20 in light of the mail situation in Washington at the  
21 moment. And Connie, did you come to a conclusion there  
22 about --

23 MS. BRENNER: That things are probably much  
24 better filed by email or fax. They can certainly be  
25 filed to one of us and we will get them to the hearing

1 clerk to stamp in the day we get them. I would really  
2 recommend, though, that if they are going to be faxed,  
3 that it be something, say six pages or less.  
4 Otherwise, you know, we don't have that much paper in  
5 fax machine. Sometimes an email works better that way.

6 JUDGE BAKER: Well, they may do that. Under  
7 the Rules of Practice, they ought to be submitted to  
8 the hearing clerk on or prior to that date. But, if  
9 you want to be the intermediary who does it, that is  
10 all right, because you are acting in their behalf.

11 MS. BRENNER: I think that would work better.

12 JUDGE BAKER: But, again, they have to be  
13 submitted to the hearing clerk under these Rules of  
14 Practice.

15 MS. BRENNER: We are going to have to give you  
16 somebody else's, email address, however, because I will  
17 no longer be there on January 7.

18 MR. ENGLISH: She has beat us to the punch  
19 here.

20 JUDGE BAKER: No, that is a situation that  
21 exists because you send email or faxes to people,  
22 particularly those who travel and have out of town  
23 commitments, and you are not sure what is going to  
24 happen. Now, maybe you have very good office staff,  
25 but, do what they are suppose to do.

1 MS. BRENNER: Actually, that is a good idea.  
2 Joyce.McPherson@USDA.gov.

3 JUDGE BAKER: Really. Well, however you all  
4 want to arrange it, but I still say, they have to be  
5 submitted to the hearing clerk by the dates so  
6 indicated.

7 MR. COOPER: Yes, but please don't just throw  
8 them in the mail by those dates without emailing them  
9 because God knows when they will get there with the  
10 mail traveling to Washington these days.

11 JUDGE BAKER: Right.

12 MR. ENGLISH: Will this scheduling order  
13 reflect that in the event there is an unanticipated  
14 delay in receipt of the transcript that the time  
15 periods would be automatically deferred by the same  
16 number of days? So that it is not necessary to request  
17 that in that event.

18 JUDGE BAKER: Very well, Mr. Beshore, Mr.  
19 English, but you have to realize I may not know whether  
20 the transcript is delayed. Sometimes the hearing clerk  
21 will get it and no one else gets it for weeks.

22 MR. ENGLISH: Well, we will somehow make sure  
23 you get notified if that happens.

24 JUDGE BAKER: All right.

25 MS. BRENNER: We start hounding the hearing

1 clerk as soon as we think it should be there.

2 JUDGE BAKER: Oh, will you?

3 MS. BRENNER: Yes, we do.

4 JUDGE BAKER: Oh, all right. Fine.

5 MR. ENGLISH: Is that all matters then, Your  
6 Honor?

7 JUDGE BAKER: I think so, unless there is  
8 something else to be taken up. I don't --

9 MR. ENGLISH: Well, there was a discussion  
10 outside in the hall and rather than my doing it alone,  
11 I think there were a couple of us who were going to say  
12 something together here for a moment.

13 JUDGE BAKER: Yes.

14 MR. BESHORE: This being the last day on the  
15 hearing record of a Federal Order Hearing for one of  
16 our number, namely Connie Brenner, we would certainly  
17 like the record to reflect that, you know, that this is  
18 Connie's last day of service on the record, at a  
19 hearing, and that it should be duly noted. We are all  
20 going to miss her professionalism and her dedication  
21 and commitment to the industry that we have all  
22 experienced over her time. And we would like the  
23 record to so reflect. And I think a round of applause  
24 would be appropriate.

25 (Applause.)

1 MS. BRENNER: Thank you very much. This is  
2 very touching and I really enjoyed my years of service  
3 and it has been really rewarding in lots and lots of  
4 ways. And now I am planning to, hopefully enjoy a lot  
5 of years of retirement, which I also expect to be  
6 rewarding and a lot different. Sleep maybe.

7 MR. BESHORE: God speed.

8 MS. BRENNER: Thank you so much.

9 MR. BESHORE: Thank you, Your Honor.

10 JUDGE BAKER: You are welcome.

11 (Whereupon, at 3:50 p.m., the hearing was  
12 concluded.)