BEFORE THE UNITED STATES DEPARTMENT
OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE

In the Matter of: )
) Docket Nos.
MILK IN THE CENTRAL ) AO-313-A48
ORDER MARKETING AREA ) DA-04-06

TRANSCRIPT OF PROCEEDINGS

The above-entitled matter came on for
hearing, pursuant to notice, at 1:00 p.m. on
Monday, December 6, 2004, at the Hilton Kansas
City Airport, 8801 NW 112th Street, Kansas
City, Missouri, before the Honorable Marc R.
Hillson, Chief Administrative Law Judge.
APPEARANCES

On behalf of the USDA:

MR. GARRETT B. STEVENS, ESQ., USDA,
Office of General Counsel Marketing Division,
Room 2343 South Building, Washington, DC
20250.

MR. JACK ROWER, USDA, Marketing Specialist, Agricultural Marketing Service,
Dairy Programs, Room 2965 South Building, 1400 Independence Avenue, SW, Washington, DC 20250.

MS. CAROL S. WARLICK and MR. WILLIAM F. RICHMOND, USDA, Agricultural Marketing Service, Dairy Programs, Room 2963 South Building, 1400 Independence Avenue, SW, Stop 0231, Washington, DC 20250.

On behalf of DFA and Prairie Farms Dairy:

MR. MARVIN BESHORE, ESQ., 130 State Street, Harrisburg, Pennsylvania 17108.

MR. ELVIN HOLLON, DFA, Northpointe Tower, Suite 1000, 10220 North Executive Hills Boulevard, Kansas City, Missouri 64153.

MR. GARY D. LEE, Prairie Farms, 1100 North Broadway, Carlinville, Illinois 62626.
APPEARANCES

(cont'd)

On behalf of Dean Foods:

MR. CHARLES M. ENGLISH, ESQ., of Thelen Reid & Priest, LLP, 701 Pennsylvania Avenue, NW, Suite 800, Washington, DC, 20004.

MR. EVAN KINSER, Dean Foods, 2515 McKinney Avenue, Suite 1200, Dallas, Texas 65201.

On behalf of National All-Jersey:

MR. ERICK METZGER, General Manager, 6486 East Main Street, Reynoldsburg, Ohio 43068.

On behalf of Foremost Farms:

MR. JOSEPH W. WEIS, VP-Fluid Products Division, E10889A Penny Lane, Baraboo, Wisconsin 53913.

On behalf of Select Milk Producers and Continental Dairy Products:

MR. RYAN K. MILTNER, ESQ. of Yale Law Office, LP, 527 North Westminster Street, Waynesfield, Ohio 45896.
APPEARANCES

(cont'd)

On behalf of Sarah Farms:

MR. ALFRED W. RICCIARDI, ESQ. of Hebert Schenk, PC, 4752 North 24th Street,
Suite 100, Phoenix, Arizona 85016.

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(Proceedings commenced at 1:04 p.m.)

JUDGE HILLSON: Let's go on the record. Good afternoon, everybody. We're in Kansas City, Missouri, on December 6th, 2004, and this is a milk hearing in the Central marketing area. This is Docket No. AO-313-A48 and DA-04-06.

Basically what I have in front of me indicates that there are 15 proposals to change the Central Federal Milk Marketing Order. My name is Marc Hillson, I'm the Administrative Law Judge in this case. This is a public hearing. Anyone can present evidence, but if you present evidence, you are subject to cross-examination and whatever evidence it is that you've presented.

As the Administrative Law Judge, I preside over this proceeding, I make sure the evidence is received in an orderly manner, I rule on objections. What I don't do is I don't have any role in deciding of the final outcome of this matter. That's up to the administrator.

Just a couple of procedural things. One is that under the rules you need to turn
in four copies of any exhibits. You need to give them to the reporter to mark. I would also note that as per the practice over the last several years, the transcript of this proceeding will be posted on the AMS website so that you can access it through the Internet.

This rulemaking is under 5 USC 556 and 557. All testimony will be under oath or affirmation. I will swear people in. If you don't want to take an oath, so help me God type of oath, you just need to tell me that, maybe in advance if you can, and you can just take an affirmation rather than swear.

After the direct testimony it's open to cross-examination, and if it's they way it's been done in the past, there will be multiple people who want to cross-examine. So one thing I want to emphasize is that, and I'm going to remind people of this over and over again over the next several days, is you need to identify yourself before you ask any questions of the witness. Even though you've done it before, even though I know who you are, you need to do it again and again because
we don't know if we'll have the same reporter all four days or what, so it's important that you identify yourself. If you have business cards to give to the reporter, that will increase the chances of your name being spelled correctly as well.

At the conclusion of the hearing I will set a briefing schedule. I will also set a schedule for turning in any suggested corrections to the transcript.

One other preliminary procedural matter is I've been informed that we only have the room through the end of the day on Thursday. I think the end of the day means like 8:00 or 9:00 p.m. I can start early, I can go late. I've noticed in the past that it doesn't work for everybody, so I'm going to try -- the goal is if it's reasonably possible, we'll finish the hearing by the end of the day Thursday, if not sooner. And that's all up to you, I guess. And I will just try to be as flexible and adjust the schedule.

Today I don't think I want -- because a lot of people got up and traveled from the
East Coast, I don't think I want to go much beyond 5:30 or 6:00 today. Tomorrow we can talk about it at the end of the day. We'll start at 8:00 or 8:30 and we'll try to go till 6:00 if we need to do that, but if we need to go much later than that, we can talk about that as time goes on.

I also want to emphasize that everyone who wants to testify will get the chance to testify. If there are people on any given day, and I'll try to make this announcement each day, if someone is only here for that particular day, whether it be today or tomorrow or the next day or Thursday and they need to testify, they will have an opportunity to come to me before -- either during a break or before the hearing starts for that day and we'll try to find a way to work you in.

I know the government has a number of witnesses to call and number of exhibits to get in, but at the first break or certainly at the end of the day today I'm going to try to get a list of witnesses and what days they plan to testify here just so we can make an
intelligent plan to get this over and done in
a timely manner.

Are there any other preliminary
matters before we take in the -- the noticed
exhibits that the government has?

I would like to just go around the
room once to have people enter their
appearances. These are people who are here in
a representative capacity. I'll start with
the government table with Mr. Stevens.

MR. STEVENS: My name is
Garrett B. Stevens. I'm with the Office of
General Counsel at the U.S. Department of
Agriculture, Washington D.C.

MR. ROWER: I'm Jack Rower.
I'm a marketing specialist with AMS Dairy
Programs, order formulation and enforcement
branch.

MS. WARLICK: Good afternoon.
I'm Carol Warlick with Agricultural Marketing
Services in the Dairy Programs, order
formulation and enforcement branch.

MR. RICHMOND: Bill Richmond,
also with the Agricultural Marketing Service
Dairy Program, order formulation and
JUDGE HILLSON: I'm not going to pass the mic around, so we'll just go -- starting behind the USDA table and we'll work our way around. Anyone else that's here in a representative capacity, wants to introduce himself.

Start with you, sir.

MR. METZGER: Erick Metzger, General Manager of National All-Jersey.

MR. WEIS: Joe Weis, Foremost Farms USA Cooperative.

JUDGE HILLSON: Okay, here on this side of the room, moving forward now.


MR. RICCIARDI: Good afternoon, your Honor. I'm Al Ricciardi. I'm here on behalf of Sarah Farms.

JUDGE HILLSON: Anyone else in a representational capacity?

Okay, Mr. Beshore.

MR. BESHORE: Marvin Beshore on behalf of the proponents of Proposals 1 and 2,
Dairy Farmers of America, Inc. and Prairie

Dairy Farmers of America.

Mr. Hollon,

Gary Lee, Prairie

Mr. English with Thelen Reid & Priest, here with Dean

Foods Company, Proposals 4 through 13 in the hearing notice. Also not with me today is

Mr. Paul Christ. He'll be with us later today or tomorrow.

Evan Kinser, Dean Foods.

Mr. Stevens, does the government have some exhibits that they want to enter?

We do, your Honor, and we've handed a copy to you for your
use and there are copies in the back of the
room. I've given the reporter four copies.

The first document we want marked is
the original hearing notice to propose the
public hearing, a Federal Register document,
Volume 69, pages 56725 through 56730. I would
like that marked as 1, Exhibit 1.

JUDGE HILLSON: Mark that as
Exhibit 1.

(Exhibit 1 was marked for
identification.)

MR. STEVENS: The second
document is another Federal Register cite
document, which is an amendment to the
hearing, notice of changing the date, I
believe, is what it does. And that document
is a Federal Register document, also Volume
69, page 61323. Exhibit 2, please.

JUDGE HILLSON: Okay.

(Exhibit 2 was marked for
identification.)

MR. STEVENS: Third document is
a one-page document with the title AMS News
Release. The copy I'm looking at has a date
of 11/29/2004. I'm just trying to give some
JUDGE HILLSON: This is off the website?

MR. STEVENS: Yes, it is a document taken off of the website.

JUDGE HILLSON: That will be Exhibit 3.

(Exhibit 3 was marked for identification.)

MR. STEVENS: And Exhibit 4, please, is another press release indicating delay of the hearing and the new date.

JUDGE HILLSON: Mark that as 4.

(Exhibit 4 was marked for identification.)

MR. STEVENS: Then we have the Certificate of Officials Notified signed by the docket clerk of the Department of Agriculture indicating that the governors of the states of Colorado, Illinois, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, Oklahoma, and Wisconsin have been notified of the hearing.

JUDGE HILLSON: I just have two, I guess they're in reverse order. Number
5, I assume, should be the original one that was September 23rd and No. 6 should be November 29th. Mine are in reverse order. I assume you want them in chronological order.

MR. STEVENS: If I could, your Honor, please. So that's Exhibit 4. And the other -- Exhibit 5, I'm sorry.

(Exhibit 5 was marked for identification.)

JUDGE HILLSON: And the second one, the one dated October 19th will be Exhibit 6.

(Exhibit 6 was marked for identification.)

MR. STEVENS: Thank you very much. And the last of the notifications is -- there are two documents signed by the Market Administrator. First one, Determination re Mailing of Notice of Hearing, one-page document dated 9/22/2004. I would like that marked as Exhibit 6.

JUDGE HILLSON: 7, I think.

MR. STEVENS: 7, thank you very much.

(Exhibit 7 was marked for identification.)
And another Determination re Mailing of Notice of Hearing marked as Exhibit 8, signed by Nicholson. (Exhibit 8 was marked for identification.)

MR. STEVENS: Now, those are the notice documents, the first eight. I have other documents that I would like marked --

JUDGE HILLSON: Through the witnesses?

MR. STEVENS: Through witnesses. These are the compilation of data, either requested by parties or otherwise prepared by the Market Administrator's offices for use of the parties at the hearing.

JUDGE HILLSON: And I assume you want these exhibits admitted?

MR. STEVENS: I would like to have them admitted.

JUDGE HILLSON: I assume there's no objection. Exhibits 1 through 8 are received in evidence.

Is it time to call the first witness.

MR. STEVENS: I have my first
witness, David Stukenberg.

DAVID C. STUKENBERG, a Witness, being first duly sworn, testified under oath as follows:

JUDGE HILLSON: Could you please state and then spell your name for the record.

THE WITNESS: My name is David Stukenberg. That's S-T-U-K-E-N-B-E-R-G.

JUDGE HILLSON: Your witness.

DIRECT EXAMINATION

BY MR. STEVENS:

Q. Mr. Stukenberg, what is your employment?

A. I'm with the Market Administrator's office here in Lenexa, Kansas.

Q. How long have you been in that capacity?

A. I've been with the Market Administrator's office for 34 years.

Q. And give us a brief description of your duties in that position in the Market Administrator's office.

A. I am responsible and oversee the statistical department and also the marketing
service laboratory.

 Q. And have you testified in hearings before in rulemaking hearings?
 A. Yes, sir.

 Q. Presented evidence for the Market Administrator's office?
 A. That's correct.

 Q. And did you prepare documents here in evidence that you brought with you here today?
 A. Yes, sir.

 MR. STEVENS: Your Honor, I would like marked for identification an exhibit which is bound in a binder, it has a cover page, has 103 pages in the document. The title of the document is Central Federal Order No. 32, Compilation of Selected Statistical Data 2000 through 2004 Year to Date. And the face of the document is self-explanatory. It was prepare for this hearing. There are copies available at the rear of the room for the parties if they would like to get a copy and follow along.

 JUDGE HILLSON: Okay, I've marked that as Exhibit 9.
MR. STEVENS: I would like to mark for identification No. 10, a cover page, I think it has 42 pages. The reason I say that is because of the second or third page of the document calls it page 3 of 42 pages, so I'm going to say 42, 42 pages more or less. It is a document entitled Central Federal Milk Order No. 32, Compilation of Selected Statistical Data As Requested By Elvin Hollon.

JUDGE HILLSON: I'll mark that as Exhibit No. 10. I will note, my copy has a supplemental attached to it.

MR. STEVENS: Yes, and I think I would like that -- we can give that pretty much any number. We can call it 10A or 11.

JUDGE HILLSON: I'm talking about the pagination in my Exhibit No. 10. You said it has 42 pages and mine actually goes up to and includes the supplemental attached to page 60.

MR. STEVENS: Okay, yours may be unique in that regard.
JUDGE HILLSON: So I've marked the Elvin Hollon request as Exhibit No. 10.

(Exhibit 10 was marked for identification.)

MR. STEVENS: I appreciate what you're saying there. I have one that the copy I'm looking at has 60 pages.

JUDGE HILLSON: Okay. I've marked that as Exhibit No. 10.

MR. STEVENS: Okay. And I would like to have marked as Exhibit No. 11 the document that is, again, a series of tables, does not have page numbers on those tables, but it contains 19 tables and a back page that does not have a table number, it's 77 pages, I see here, so the back would make it 78.

JUDGE HILLSON: That's the one called Elvin Hollon Supplemental?

MR. STEVENS: Yes, I would like to have that marked 11.

JUDGE HILLSON: So marked.

(Exhibit 11 was marked for identification.)

MR. STEVENS: Then as Exhibit
No. -- I would like marked for identification Exhibit No. 12, a document that is also a Compilation of Selected Statistical Data As Requested by Evan Kinser, as so stated on the front page of the document. It's to be 53 pages.

JUDGE HILLSON: We'll mark that as Exhibit No. 12.

(Exhibit 12 was marked for identification.)

MR. STEVENS: We would like marked as Exhibit No. 13 a similar compilation, supplemental for Evan Kinser, a document of -- this one doesn't have page numbers. Bear with me a minute.

JUDGE HILLSON: These are all on double pages?

MR. STEVENS: They are. They are all double sized, double page statistical tables.

JUDGE HILLSON: I've marked that as Exhibit No. 13.

(Exhibit 13 was marked for
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MR. STEVENS: We would like
marked Exhibit 14 a similar type document,
Compilation of Selected Statistical Data As
Requested by John Vetne, looks to be a 53 page
document.

JUDGE HILLSON: I've marked
that as Exhibit No. 14.
(Exhibit 14 was marked for
identification.)

MR. STEVENS: I see page 53,
having looked at it, I've looked at the last
page and it's marked 24. If somebody has a
different one, I -- I want to make sure --

JUDGE HILLSON: Mine has 24
pages.

MR. BESHORE: It says 53 of 53
at the top.

MR. STEVENS: It says 53 of 53
at the top, the last page of it is 24, so
we'll go through it, I guess --

JUDGE HILLSON: I'm just
looking, as you go through the exhibit, it
says page 13 of 53, 21 of 53 --

MR. STEVENS: These are two
sided documents, most of them, so --

JUDGE HILLSON: We'll use the numbers at the top.

MR. STEVENS: When I look at it, I see, going into the document to the last page that is marked 24 at the bottom, it says page 53 of 53.

JUDGE HILLSON: We'll call it 53. It's marked as Exhibit No. 14.

MR. STEVENS: And we have some other witnesses, but these are the documents that relate to this witness.

JUDGE HILLSON: Okay. I've marked Exhibits 9 through 14.

MR. STEVENS: Now, if you permit me, your Honor, we'll go through the documents and try to do this as quickly as we can. We understand there's a lot of material here. What we're going to try to do is just go through them and give examples of what is there and talk about some of the particular data that's in there, not to belabor and go through it in too much detail, but to give you a feeling for what is here.

Q. (By Mr. Stevens) David, start with
Exhibit 9, and I will ask you -- I'll ask you the questions and, of course, they relate to most -- to each of these various exhibits.

These were prepared by you or pursuant to your supervision?

A. That's correct.

Q. And they come from documents of your office --

A. Yes, sir.

Q. -- the Department of Agriculture, other officials documents?

A. Yes, sir, they do.

Q. And before we get too far into it, these are not presented for or against any proposal, are they?

A. No, they're not.

Q. They're prepared for the use of the parties in the hearing for the purposes that they choose to use them for?

A. That's correct.

Q. Now, looking at No. 9, there's a table of contents and there's various tables given there that describes what's in the documents -- it gives you an indication of what's in the exhibit, so that's
self-explanatory. When we get to the tables, like starting at No. 1, which is on page 2, just tell us something about that. I mean, what does it represent?

A. This is for the Central Federal order, and the first section there has to deal with the class prices at 3.5 percent butterfat. And then the next four columns are the numbers that go to make up the class prices that are used to calculate the Class I prices.

Q. Okay. And reading across at any line there, of course I see averages for the years, I see monthly prices, monthly data, that's what's represented there?

A. That's what's represented.

Q. That's what the document shows.

A. And going back to the year 2000, we also have it in graphic form, so if there's any variations there, should be evident as to the prices going up or down.

Q. So the tables, those are representations at the bottom of the page you're talking about?

A. Yes, sir.
Q. The second table, what does that represent?

A. That is the Class II prices. And again, the Class II price in the first column and then the other three columns are what make up the Class II prices, or the Class II price at 3.5 percent butterfat.

Q. So-called proponent prices?

A. That's correct.

Q. And the 3.5 price, Class II, is that represented by the table -- the graph at the bottom of the page?

A. That's correct.

Q. So you can see the yearly averages and the monthly averages for that?

A. Correct.

Q. And it goes year to date for 2004?

A. That's correct.

Q. Table 3?

A. Table 3 is basically the same thing. We have the Class III price at 3.5 percent butterfat and, again, the component prices that are used to calculate the Class III price at 3.5.

Q. And the graphic representation at the
bottom of the page?

A. Right.

Q. Averages for the year?

A. Uh-huh.

Q. Monthly year to date for 2004?

A. Right.

Q. How about Table 4?

A. Table 4 is the same thing again only for the Class IV price at 3.5 percent butterfat. It lists the components: The butterfat, nonfat solids, and skim; and the averages for the year, along with a graphic representation at the bottom back to the year 2000.

Q. And you have year-to-date information for 2004?

A. Year to date for 2004 is correct.

Q. And graphic representation at the bottom of the page?

A. Correct.

Q. This is similar for each of these. I guess we can go through each one of them, but we probably don't have to in the course of time, people can ask you questions about them if they want.
Table 5, that's producer prices for Jackson County?

A. At Jackson County, yes, at the $2.00 location differential.

Q. With the same information represented as in the previous graphs?

A. That's correct.

Q. Table 6 is advanced Class III and IV pricing factors?

A. That's right.

Q. Same information?

A. Same information.

Q. But no graphic representation, I see on that page.

A. Right.

Q. Let me move on to Receipts At Pool Plants. I should say just for the record that that section was component and producer prices, and now we're moving into Receipts At Pool Plants.

A. Right.

Q. Table 7.

A. Table 7.

Q. Why don't you tell us about that.

A. First column is the total receipts
pooled, which includes the other source and
other Federal order receipts, the inventory,
and the overages. And if you subtract the
three columns from that, you end up with a
total producer milk that was pooled on the
Central order during each of the years 2000,
2001, 2002, and by months for 2003 and year to
date for 2004.

I might mention that there is a
mistake on here. Under the -- for October
2004, the October total receipts pooled and
the total producer milk, those two numbers
need to be switched.

Q. Okay. Which columns?
A. The first column and the last column
for October 2004.

Q. So tell me if I'm wrong, but I'm
looking at a $15 million figure reversing with
another figure?
A. No, for 2004 for October.
Q. I'm sorry.

Q. Thank you very much.

MR. HOLLON: What table are you
on, Garrett?

MR. STEVENS:  Table 7.

Q.  (By Mr. Stevens)  For October 2004, the first column and the last column --

A.  Yes.

Q.  -- are reversed?

A.  Right.

Q.  It has a graphic representation?

A.  Right.

Q.  Now, Utilization By Class.

A.  Oh, I might mention too, the year-to-date numbers are also reversed.

Q.  Are they?  Okay.

Then we move on to Utilization By Class, Table 8.

A.  Table 8 consists of how the Class I milk was utilized. First column is the whole milk, the next column is reduced fat, and lowfat followed by the skim and -- or skim and fat free milk.

Next page, we can continue on with the flavored milk, the buttermilks, and the eggnog. Altogether these numbers total up to equal the total Class I sales on routes by distributing pool plants.
Q. All right.

A. On Table 8, then, continued on with the Class I to nonpool plants is added in to obtain the number at the end, as are the Class I ending inventory and the excess shrinkage, altogether then total the right-hand column, the gross Class I utilization.

Again, these are yearly data for 2000, 2001, 2002, monthly data with a year total for 2003, and year to date for 2004 by month.

Q. Go ahead.

A. The next page, page 14, if you subtract from the previous column on page 13, take away the other source -- or other order and other source milk and the beginning inventory and overage, you end up then with the total producer milk utilized in Class I.

The next column is the percent that is of the total producer milk pooled.

Q. And the tables numbered 8, that's all Class I utilization?

A. That's all Class I, that's correct.

Q. Now we move to 9.

A. 9 --
Q. Are you finished with Class I there?
A. No.

Q. Then the next tables?
A. Table 9 --

Q. Next set of tables, I should say.
A. Table 9 is the Class II products, starting off with fluid cream, then sour cream and dips, yogurt, cottage cheese, frozen desserts, and other Class II. Then add to that the Class II to nonpool plants, Class II shrinkage, and we end up then with the gross Class II utilization. Adding up all the previous columns combined, you end up with the gross Class II utilization. Again, these are yearly totals with monthlies for 2003, 2004 year to date.

Take away from the gross Class I total the other source milk and other order milk, less the beginning inventory and overages, and you end up again like before, the total producer milk utilized in Class II, with the last column being the percent that is of the total producer milk pooled.

Q. Just like the other set of tables,
this is for the years 2000 through 2004 year
to date?
A. That's correct.
Q. Could you move on to Table 10?
A. Table 10 is the same thing only with
Class III this time. The first column is
Class III products, which primarily is cheese.
Added to that the approved dumps and animal
feed, Class III to nonpool plants and
shrinkage, and we determine then the gross
Class III utilization.

Like before, we take away the other
source milk and the other order milk and the
beginning inventory, and we calculate then the
total producer milk utilized in Class III.
And the last column being the percent that is
of the total producer milk pooled.
Q. All right. And that information is
for years 2000 through 2004 year to date?
A. That's right.
Q. You want to tell us about Table 11?
A. Table 11 is a similar format where we
start out with the Class IV products, the
improved dumps and animal feed that got
allocated to Class IV, the Class IV to nonpool
plants, ending inventory and shrinkage to
determine the gross Class IV utilization.
From that we subtract the other source and
other order milk, the beginning inventory and
overages, and we calculate then the Class IV
producer milk. And the last column is the
percent that is of the total producer milk
pooled.

Q. And we have this information for the
years 2000 to 2004 year to date?
A. That's right.
Q. Tell us about Table 12.
A. Table 12 is the assembling of all the
percentages put together on one page for Class
I, II, III and IV, how that producer milk was
utilized.
Q. And that's information for the years
2000 - 2004 to date?
A. That's right.
Q. And also a graphic representation of
that?
A. Right.
Q. Table 13, please.
A. Table 13 are the pounds of producer
milk utilized by class: Class I, II, III and
IV, with the totals on the right-hand column.

Again, for the -- by year 2000, 2001, 2002, and monthly data with the total for the year for 2003 and year to date for 2004 by month.

Q. And then two graphic representations?
A. Two graphic representations.

Q. All right. Now, let's move on to the Fluid Milk Sales section. Table 14.

A. Table 14 is the listing of all inside area sales by pool and nonpool plants. First column is the in-area sales by the pool plants. This is on routes distributed inside the marketing area. Table 2 is the in-area sales by the nonpool, which includes other Federal order and partially regulated handlers, producer handlers, and any other that is not a regulated handler. Then the total of that is on the right-hand side.

Q. Then the graphic representation, information for the years 2000 - 2004 to date?
A. That's correct.

Then the next page, continuation of Table 14, it's a breakdown by Federal order within area sales by the nonpool plants.

Start off with the Northeast and Appalachian
orders combined due to confidentiality.

Q. All right.

A. Then we have the Southeast order, the Upper Midwest order, the Pacific Northwest, Southwest, Western and Arizona, Las Vegas orders combined. Then in-area sales by partially regulated plants, producer handlers, and then by exempt plants. The total, then, on the right-hand side is the total in-area sales by these nonpool plants.

Q. And that information is displayed for the years 2000 to 2004 to date?

A. That's correct.

Q. Move on to Table 15.

A. Table 15, then, is the out-of-area sales by the nonpool plants. The in-area sales is the first column and shows to be approximately 85 to 86 percent of the sales by the regulated handlers, or inside the marketing area, with the remaining 12 to 15 percent outside of the marketing area. And then the last column is a total of the handler sales.

Continuation of Table 15 on page 29 is a breakdown by which areas these sales went
to. The first column is the Northeast and the Appalachian order, followed by the Southeast, the Upper Midwest, sales into the Mideast. And then combined we have the Pacific Northwest, Southwest, Western, and Arizona/Las Vegas orders. And this is followed, then, by the unregulated sales, sales in unregulated areas, and then last column is the total out-of-area sales by the regulated pool handlers.

Q. All this information given represents the data from years 2000 to 2004 to date?

A. That's correct.

Q. Now, moving to the section entitled Price Components in Producer Milk starting with Table 16.

A. Table 16, the first column is the pounds of butterfat in the producer milk that was pooled and the average tests. The next column is the price of that butterfat and the value of that butterfat in total dollars. And again, that is for the years 2000 through 2004 to date.

Q. Go ahead.
A. Table 17 is the protein in producer milk. The pounds of protein that was marketed in the producer milk is the first column, the average test is the next column, the average price for the protein is then listed, followed by the total protein value in the pool of the producer milk.

Table 18 is the other solids. Again, the same format. We have the total pounds of other solids pooled, the average test, the other solids price, and the other solids value.

Table 19, we show the pounds of butterfat in the producer milk by class. And this is priced at the handlers at Class I in the first column, Class II in the second column, followed by Class III, IV, and then the total pounds of producer butterfat. This, again, is for the years 2000 through 2004 year to date.

Table 20 is the utilization of the butterfat in producer milk by class: Class I, II, III, and IV on a percentage basis, so coming across the last column equals 100 for the years 2000 to 2004 year to date.
The next column is the skim milk that is priced. This is primarily in Class I. The first column is the --

Q. Excuse me a second. I believe you said the next column. The next table, Table 21?

A. I'm sorry, 21. The skim pounds in producer milk. The first column is the total pounds of skim milk in producer milk, and the next column is the Class I skim milk that was priced at the handlers plant. And, again, we have in the last column we have the percent of the producer skim milk that is priced at Class I of the total producer milk marketed.

Table 22, we have the same thing with the protein. We have the protein pounds that were marketed by the producers. And since protein is priced only in Class III at the handler, the next -- middle column, then, it lists the pounds of protein that were priced at these handlers and the percent of the protein that is priced at the handlers for the years 2000 through 2004 year to date.

Table 23 is the same with other solids. We have the other solids that was
marketed as producer milk, followed by a column that shows the other solids that were priced at the Class III handlers -- or priced at Class III at the handlers. And the last column is the percent of the other solids that was priced as Class III.

Table 24 is the solids-not-fat, which is a combination of the protein and other solids. First column is the Class II pounds, the next column is the Class III pounds, which includes the other solids and the protein, and the Class IV column is primarily the other solids, and together they total up, then, to the total solids-not-fat pounds that were priced at the handlers. I'm sorry, that's total producer nonfat -- solids-not-fat pounds.

Table 25 is the utilization of the solids-not-fat in producer milk by class. First column is the percent that was utilized in Class II, Class III is followed, Class IV, followed by the percent of producer solids-not-fat which was priced at the handler.

Table 26 lists the somatic cell count
in the producer milk. First column is the average marketwide average of the somatic cells for years 2000 through 2004 year to date. The next column is the rate at which the somatic cells were priced.

JUDGE HILLSON: Why don't you spell somatic? I know it's right in front of you, just so we have it correct in the transcript.

A. Okay. Somatic is spelled S-O-M-A-T-I-C.

And the last column is the value to the pool of the somatic cell adjustment.

Q. (By Mr. Stevens) Now, moving on to the section of the exhibit entitled Producer Receipts By State and County of Origin.

A. Table 27 on page 44 lists the marketings by state for the years 2000 and 2001, and we list the number of farms and the pounds of milk marketed from each of the states listed.

Q. That document starts on page 44?

A. That's correct, page 44.

Q. And ends?
A. Ends on 49.

Q. What you've described is the information contained for the various states on those pages?

A. Right, for the years 2000 and 2001.

Q. We pick up at what page, then?

A. On Table 28, then, we start with the same data for different years, for the years 2002 through 2003, by state listing the number of farms and the pounds of milk marketed. This continues on for another six pages.

Q. So that runs from page 50 --

A. 50 through page 55.

Q. Okay. Pick up there.

A. And then Table 29 on page 56, it's the same thing but for the year 2004, marketings by state --

Q. To date, right?

A. To date, right. Well, through September.

Q. I hear you. Okay, exactly. This is based on the latest data you have available, I assume, for this hearing?

A. Right.

Q. And that information runs from what
From page 56 through page 60.

Table 30 are two maps for the month of September 2004. What is listed is actually pooled --

There's a misspelling there I see on the page, I see that. Do you see that,
"actual"?

A. Actual.

Q. You're a milk marketer, not a --

A. Right, right.

Q. But that is "actual" is the word?

A. That's right, actual.

Q. That just jumped out at me. I'm not picking on you, it just jumped out at me. It can happen. It can happen. Okay.

A. Map on the left-hand side shows the graphic representation, breaking it down into five different categories. The first one is a very light blue showing less than 1 million pounds of milk from which there were 459 counties that marketed milk or pooled milk on the Central Federal order.

The pink is 1 to 4 million pounds for
61 counties, followed by 4 to 12 million pounds in the blue, and then the darker blue, from 12 to 32 million pounds from ten counties, and one county had in excess of 100 -- the 104 million -- had between 100 and 104 pounds of milk pooled on the Central order.

Q. Right.

A. And listed below that are the total marketings that were pooled during the month of September 2004. And followed by the pounds of milk that came from within the marketing area and the pounds of milk that came from outside the red line that's indicating the -- that is indicative of the marketing area.

Q. Okay. And the other map on that page?

A. The other map on that page on the right-hand side indicates since September was a month where there was a great deal of milk that was depooled, we had been asked to present data to indicate how much of the depooled milk -- or where the depooled milk was actually located that was depooled.

Q. And that document, I'm not going to
ask you to go through each of the colors and
whatever, but looking at the legend in the
box, you can determine the location of these
various depoolings and volumes by the colors
that are represented there?

A. That's correct.

Q. And I'm doing this, I guess, in an
effort to move it along as quickly as we can.
I mean, the document speaks for itself,
certainly, and what it represents. You might
say the same thing about the other tables that
we're going to go into starting with Table 31.
So I guess, unless there's an
objection, to me it seems they are
self-explanatory, you can just say what they
are but we don't have to go through each of
the legends, just give us a brief description
of each of them.

A. Table 31, then, shows the county
marketings for September 2003 and September
2002. And again, down at the bottom we have
the total pounds that were marketed, how much
came from inside the marketing area, how much
came from outside.

Q. Okay.
A. Page 65, we show the same data for September 2001, followed by September of 2002.

Page 67 --


A. Table 33, page 67 through page 83, the next 16 pages are listing, then, of marketings by state and county for December of the years 2000, 2001, December 2002, and December 2003.

Q. (By Mr. Stevens) That document is self-explanatory in the representation with the state, the county and the volumes?

A. I hope so.

Q. And that's what it's intended to do --

A. Yes.

Q. -- that's how you made it.

A. Right. So for comparison sake, we have all four years -- all four Decembers listed on the same line.

Q. That goes through --

A. That goes through page 83.
Q. Now, starting with the section entitled Plants Regulated Or Associated With the Central Federal Order, Table 34.

A. Table 34 is a listing of all the plants. First one is the distributing plants that were pooled, the listing of all the distributing plants that were pooled, what city and state they were located in, followed by the ZIP Code and the FIPS code.

Q. FIPS being -- you might explain, FIPS.

A. FIPS is the geographic code that is used in data processing, for the most part, I think, as a delineation of state and county.

Q. All right.

A. For instance, the -- on Anderson-Erickson, the FIPS code there is 19. 19 is indicative of the state code and the next three digits are the county code in which that plant is located.

Q. Okay.

A. The next column is the Class I differential applicable at each of these plants. And the January through December for the year 2003 is the months in which these
plants were pooled, as indicated by the number
32.

Table 35 is the same thing for the
year 2004 to date, through October.

Table 36 is the listing of these
plants and graphic representation that were
pooled in October 2004.

Table 37 is a listing of the supply
plants during the year 2003. Again, the same
data, the city, the state, the FIPS, the ZIP
code and then the FIPS code, followed by the
differential applicable at those plants, and
each of the months in which these plants were
pooled as indicated by the number 32.

Table 38 on page 90 is the same
information for the year 2004.

Table 39 is a map showing the
location of these supply plants for October
2004.

Table 40 on page 93 lists the
cooperatives that filed a report that they
acted as handler on, for the year 2003, as
indicated by an X in each of the boxes for the
corresponding months in which reports were
filed.
Q. So the absence of an X would mean no report?

A. They did not file a report for the cooperative, the same as milk as pooled on the Central order.

Below that is a listing of the producer handlers that are pooled that -- sorry, I shouldn't say pooled -- but producer handlers that marketed milk on the Central Federal order during the year 2003, followed by partially regulated plants that also marketed milk on the order.

Q. Also shows their location?

A. And their location, that's correct.

Table 41 is for the year 2004, and it shows the cooperatives that have filed a report where they acted as the handler on that milk. And again, underneath that is a listing of the producer handlers by city and state, and also the partially regulated also by city and state that have marketed milk on the Central Federal order.

Table 42 is a graphic representation of where these plants are located, or where their headquarters are for the cooperatives.
that pooled the milk.

Q. Let me make sure I understand that. It's not where the plant is located?

A. No.

Q. It's, again?

A. The cooperative headquarters are where they pooled the milk. For instance, DFA here in Kansas City is not a plant, it is an office. That's where the report is filed from.

Q. Now, you've included an appendix with this exhibit?

A. Yes. For the appendix on the first one, page 99, we show a listing -- or a graphic representation of the Class I differentials broken down into six different zones.

Q. The legend of the document indicates the -- say it again.

A. The applicable Class I differentials at each of these counties.

Q. Okay.

A. 44 on page 101 shows the Central marketing area in the multitude of colors there, along with a listing of certain cities
where these plants are located, and gives you
an indication of the Class I differentials
applicable at those cities.

Q. And the number in parentheses in the
legend?

A. How many counties are included in
the -- first one, for instance, says 22.
That's how many counties are at the $1.70
Class I differential, primarily up around the
Sioux Falls area in this case.

Q. Okay.

A. On page 103, this is a map showing
the current Federal order marketing areas as
of April 1, 2004.

Q. Okay.

MR. STEVENS: Your Honor, what
I propose to do is have the witness go through
the exhibits that he has and then offer him
for cross-examination as opposed to each
individual exhibit.

JUDGE HILLSON: I think that's
a good idea. I have no problem with that. I
don't want to have each document one at a
time, cross-examination; this will be in a
more orderly. You can remember your
questions, I'm sure.

Q. (By Mr. Stevens) Moving on to No. 10, Exhibit No. 10. You prepared information for the hearing?

A. That's correct.

Q. You were requested to prepare information for the hearing by more than one individual companies?

A. That's right.

Q. And could you tell us, with respect to the information in Exhibit 10, does a letter that constitutes the first three pages or so of that exhibit, does that basically describe how you came to prepare this exhibit or the reasons why or you had a request so you prepared documentation?

A. Right. That's the reason it's listed here is to show that there was a request submitted, and we prepared it to the best ability based on the data that we had available.

Q. And the documents that are included in this exhibit are that?

A. That's correct.

Q. All right. Would you go through them
briefly, describing what they are, the request, and what was then prepared and presented?

A. Okay, sure. In regards to DFA Request No. 1, as found on page 5, we have listed the state and county data for the Central order in our own exhibit, Exhibit No. 9. And DFA also requested state and county data for the Western order, and that will be presented by a representative from the Seattle Marketing Administrator's office a little later. And he also requested data for the Upper Midwest, or Order 30, state and county marketings, and that is included in the supplement marked Exhibit 11.

Moving on to No. 2, the request was for the various highway distances, or distances from one point to another. First one starts out with Des Moines, and the grid that's set up or the matrix that is set up here is Des Moines and Boise. We have listed the quickest highway distance at 1,396 and the shortest at 1,347. And it corresponds that way throughout the whole matrix here. And our source for this was Trip Maker Deluxe.
Q. On what pages of the exhibit do you find that information?

A. That was on page 6 of the exhibit.

Q. All right.

A. That corresponds to his Request No. 2.

And on Request No. 3, we started off with the Southern Illinois-Eastern Missouri Federal order, which is before Federal Order Reform, so going back to the years 1997, '98 and '99. In the first column we listed what the Class I price is at Alton, Illinois, followed by the Class II price and the Class III price and the uniform price, which was also at Alton, Illinois.

And then there was also a request for what the PPD would have been, so we determined a proxy for the PPD, producer price differential that is, by subtracting the uniform price and the Class III price. And as you can see on the first one there for January of '97, turned out to be $1.01.

On page 8 we have a listing of the utilization of the producer milk as pooled. Class I in the first column, followed by Class
II and III. There were only three classes back then. And the fourth column is the total of those three class producer pounds combined. This is followed, then, by the percent utilization, which is basically the Class I price divided by the total producer price to come up with a percent that was utilized in Class I. And the same follows for Class II and III. And the requester also asked that we would estimate the producer milk not pooled, and that is found in the last column.

They also asked for the Nebraska-Western Iowa order, Order 65. And again, it's in the same format where we show the Class I, II and III prices. In this case there was a Class III-A price, which included milk that was used to manufacture nonfat dry milk. The next column is the statistical uniform price, and the producer price differential in the last column.

On page 10 we have the pounds of milk that were pooled in each of the three classes. We combined Class III and III-A because the Class III-A data was confidential. So when
you add those three across, you come back to
the total producer milk pounds pooled along
with the Class I percent, Class II and Class
III percentages and then an estimate for the
producer milk that was not pooled due to
price. These, again, are for the years '97,
'98 and '99.

On page 11, the same data is
contained as before, where we list the Class
I, II and III prices along with a Class III-A
price, the statistical uniform price and the
producer price differential.

Page 12 is the listing of the pounds
of producer milk pooled by class along with
the total, then the percents, Class I, II and
III, and we have listed in this case the III-A
pounds that were pooled for most months.
Several months were restricted, in which case
they are not combined with the Class III over
here. In fact, none of this is combined with
the Class III. III-A in this column here
stands alone. Class III concludes the Class
III and III-A.

Q. Now, just so the record reflects,
when you say restricted, you mean that you are
not allowed to give out information which
would do what?

A. If there were less than three
handlers involved. So it would be no problem
for one handler, if he had this data, to
subtract -- if he knew what his pounds were,
he could subtract and determine what the other
one was, know how many pounds the other one
did.

Q. Okay, go ahead.

A. On Exhibit -- on page 13, DFA Request
4A, the request was for how much or what
effect Idaho milk would be on the PPD if it
were included at the rate of either 25 million
pounds, 50 million pounds, 75 or 100 million
pounds.

The actual PPD for November 2003 was
$0.20, including Idaho milk at the tune of 25
million pounds, would have lowered the PPD by
$0.06 during the month of November. And as
you can see, it continues to decrease. We
base this on a location, Class I location
value of $1.75 and determine the producer milk
based on the component values for the Western
Federal order.
The same data is also contained here for December 2003 and January 2004 listing the actual prices and recomputation of using the additional Idaho milk based on the criteria I've set forth in the first one.

Page 14, we list the producer price differential computation with the effect of the incremental increase of the depooled producer milk utilized in Class III. So this is saying if the depooled milk was added back in, what effect would that have on the producer price differential at the various percentages as listed across the top.

First column contains the producer milk as pooled, the next column is the Class III estimated depooled pounds, followed by the weighted average PPD. And this is before the Producer Settlement Fund is adjusted; in other words, the minus $0.04 to $0.05 taken out. In fact, all of these numbers are indicative of the same, so there would be no question as to the rounding of the Producer Settlement Fund. The first column is the 25 percent effect, then followed by the 50 percent, and then 75 and 100 percent.
On page 15 we have just the opposite. We have what the actual Class III pounds were listed. And if these pounds were reduced by the increments of 25, 50, 75 and 100 percent and that particular effect on the PPD. And this goes for the months January -- or July 2003 through May 2004.

Page 16 is the estimated volume of maximum milk allowed to be depooled at the 125 percent depooling limit with a three month lag time. So in the first month, 49 percent of the milk, followed by 36 percent in the second month, and 20 percent in the third month, or a three month average of 35 percent.

Number 6, DFA Request No. 6 is also found on page 16 as the estimated volume, but 115 percent of the depooling limit with the three month lag time. First month is 34 percent, followed by 24 percent, 13 percent in the third month, or the three month average of 24 percent.

DFA Request No. 7 is found on page 17. It's the pounds of milk transported from supply plants to distributing plants in increments of 100 pounds during the year --
Q. Excuse me. Increments of 100 miles?

A. 100 miles. I'm sorry, 100 miles, during the year 2003. So in the first one with less than 100 mile distance shift, there was 12,048,687 pounds. And this is going down in various increments. Two of the areas were restricted because there were less than three handlers involved, and the 101 to 200 mile range and at the 500 to 600 mile range. Total for the year, then, that moved from supply plants to distributing plants was 213,786,101.

Page 18 is the pounds of producer milk that were actually pooled with their percent change from the previous month. This is not on a daily basis, this is a strictly percent change.

DFA Request No. 9 is found on page 19, and it's the hauling rates by state. First off we list Colorado, Iowa, Illinois, Kansas and Minnesota and Northern Missouri on this first page, and this is for the years 2000, 2002 and year-to-date 2004.

The next page, 20, is for the states Nebraska, New Mexico, North and South Dakota combined, Oklahoma, and then Wisconsin.
Page 21 is a county breakdown of the hauling rates for the year -- for the month January 2004. Again, this is listed by state and by county for each of the counties that pooled milk on the Central Federal order during the year -- during January 2004. This goes on for eight pages.

Q. Now we're at page?
A. 29. DFA Request No. 10, the question was: What is the Class I contribution to the pool.

To determine this, we determined the value -- the value as the difference between the Class I price at the location and the producer milk differential at location. The Class I price is based on the announced Class I skim and butterfat prices and applying the market average component values to the same milk being used to compute the producer component prices or -- excuse me -- the same milk using the producer component prices and somatic cell adjustments.

Q. What you've stated is in the footnote, the asterisk, the record should reflect that's what you mean?
A. That's correct.

Q. In other words, column 1 is modified or is explained by what is after the asterisk?

A. That's correct.

Q. Thank you.

A. The next column is the Class I value as pooled followed by the total pool value. Then the next column is the percent Class I value is of the total. In other words, taken in the first line up there, the 46.9 million divided by the 128.6 million to equal the 36.5 percent. And the PPD that was applicable for each of those months, January 2000 through October 2004.

Page 31 is a combination of the DFA Request Nos. 11 and 12. First might add that for January 2004, this was a verbal request by Foremost Farms, and the August and October was requested by DFA.

For January 2004, what is shown here on the first column is the actual PPD as pooled. Then followed to the right of that is the total pounds included in the pool and then the value of the pool itself, with the PPD determined before the Producer Settlement Fund
adjustment is made.

In calculating, then, the assembly credits, we came up with an assembly credit value of $388,808, and that is added in and we -- no, subtracted, I'm sorry -- subtracted and determined the PPD before the Producer Settlement Fund adjustment of 70.3530 cents.

Q. As represented on the document .703540?

A. That's right. And taking out the more than four but less than 5, we end up with a PPD of $0.66, or a reduction of $0.03.

And then on the transportation credit, as defined, we subtract off another $142,619 and determine a PPD before the Producer Settlement Fund of .692344, or PPD after the Producer Settlement Fund adjustment of $0.65. This is the same methodology that was used, then, for August 2004 and October 2004.

On page 32, DFA Request No. 13, they asked for splitting up the marketing area -- or distributing plants, I should say, in four different regions. And to start off with in Area 1, included primarily the Colorado
distributing plants. Area 2 was labeled as 
Nebraska and Iowa, which does include the 
plant in Sioux Falls, South Dakota, and a 
plant at Kansas City, Missouri, here.

Q. Now, reading across one of those 
areas, you describe the information, you said 
the name of the plant and where it is, what 
state. What else is represented here?

A. The ZIP Code is the next number that 
is listed, followed by the Class I location of 
that plant.

Area 3 is primarily the Illinois and 
Missouri plants -- or it is Illinois and 
Missouri plants. And on Area 4 is combining 
the Oklahoma and Kansas plants. And at the 
bottom is a listing of the supply plants that 
were used in these maps.

So on the first one on page 33 at the 
top for January 2004, for the Colorado area 
handlers, 95,808,529 pounds of milk were 
received directly at these plants.

Q. In accordance with the material in 
the legend, with the description in the legend 
as to the volumes at specific distributing 
plants?
A. Right, the five different color
gradients listed there.

The bottom section of that page is
for July 2004 for the same area, the Colorado
area.

Page 34 is for the Iowa and Nebraska
area plants. Also showing January 2004 at
158,671,671 pounds were received directly at
distributing plants from the farm. Listed
below is the same data for July 2004.

On page 35 we have the Illinois and
Missouri plants, that's eastern Missouri area,
not counting the one in Kansas City because
that's part of the previous page, page 34. So
for January 2004 we have 130.6 million pounds,
and listed below is July at 121.6 million
pounds received directly at distributing
plants.

Q. Now, we can read along here to each
of these tables and we see similar information
for the months represented there and the
locations indicated on the tables; in other
words, they describe this situation at
locations, various locations for various ones
as demonstrated on those pages?
A. That's correct.

Q. And that information continues --
A. Continues on to page 36. Is also January and July 2004 data. And then on page 37 we have August data for the Colorado area on the top, the Iowa and Nebraska area on the bottom, followed by the eastern Missouri and Illinois data, at the bottom of that is the Kansas/Oklahoma data. And on page 39 is the supply plant marketings by county that were received directly at supply plants.

Q. The previous documents are distributing plants?
A. Strictly distributing plants.

Q. And the last is supply plants?
A. That's correct.

On page 41 we have DFA's Request No. 14. The request was to go through a sample of the assembly and transportation credits as proposed.

So we picked, for instance, a plant in Des Moines, Iowa. These numbers are not indicative of the actual marketings, production at that plant or any other things, these are just purely for an example purposes.
Q. A hypothetical?

A. Hypothetical, right. Say, for instance, that that plant had a gross Class I utilization, then, of 22 million pounds, and we backed off, as described in the proposal, some of the various other receipts at that particular plant, and we end up, then, with a remainder of 20 million pounds.

Of the physical receipts of that plant, following on down five or, just small (i), (ii) and (iv), these are references to the proposal. Under A we have the producer milk that was received directly at that plant, followed by the producer milk that was received as 9(c), or cooperative acting as handler, and then, for instance, we have three supply plants listed, or other pool plants is what's indicated here, and by totaling those up we end up with 25 million pounds.

Taking the 20 million pounds listed up above, divided by the 25 million pounds, we end up, then, with a pro rata of 80 percent, which is listed along that same line with the 20 million pounds.

So with that pro rata, then, we take
the numbers here, for instance on the producer column, we take the 3 million -- or producer line, we take the 3 million pounds times the 80 percent to come up with the 2.4 million pounds as listed. We do the same thing all the way down the line and end up exactly again with the 25 and 20 million pounds.

To the pro rata numbers, we take the rate of $0.10 per hundredweight to come up with the values as listed there, which would be the assembly credit values. At $0.10 a hundredweight comes down to $20,000.

This is followed, then, underneath that with the transportation credit example as listed in the proposal as 55(a). We use the three supply plants, one at Grant County, Wisconsin, Morgan County, Colorado, and Houston County, Minnesota. Using the rate of $0.30 as specified and the 217 miles on the first one for Grant County, for instance, we determine, then, a rate of 65 -- or $0.6510 and determine the value, then, of applying the 1.6 million pounds at that rate to come up with the $10,416.

Then as specified under 3, A 3, we
take the transferee's price, which is the
plant at Des Moines, from the transferor
price, which is at Grant County, Wisconsin,
and come up with a difference of $0.05. And
that effect of the $0.05 is the $800 as listed
below.

So in effect, what we do is take the
$0.6510 and from that we subtract the $0.05 as
listed there and come up with a value, then,
or a rate of .601 times the 1,600 pounds to
determine the $9,616 credit.

In the middle column I might add that
there is no difference in the transferee price
or transferor -- there is a difference in that
price, but there is no positive -- we only
deal with positive numbers only as specified
in the proposal.

On the back side of that on page 42
we show the miles that were used. In this
case we used the shortest highway distance
miles.

On page 44 -- actually, 43 is the
supplement made to back up the maps on Request
No. 13. This was requested after we had
prepared the exhibit together, and the
question was, well, where is the data. Well, this was added late Friday afternoon.

Q. So in order to supplement the information included on the maps, you created this information at the request of Mr. Hollon?
A. That's right.

Q. This information is contained on the pages of this document from what pages?
A. Page 44 till the end, page 60. It is for two months, for the month January 2004 and July 2004.

Q. Could I direct your attention to the exhibit marked for identification as No. 11? Now, that information, you received a request to prepare that information?
A. Right. This is part of Elvin Hollon's Request No. 1. Like I mentioned before, the data for Order 32 was contained in the Market Administrator's exhibit, the data for Order 30 is contained here.

Q. All right.
A. All it is, for the year 2000 through date or as much as possible through August of 2004, is the marketings by state along with a map showing where these counties are located,
and then the individual county listings follow
for each of the months of December 2000 and

The numbers at the bottom correspond
to an exhibit that was prepared for the Upper
Midwest hearing back in August, I think it
was, and that's why there may be some
confusion over the numbers listed down at the
bottom. It was taken directly from that
particular exhibit with the exception of the
last page, which updates the marketings by
state.

Q. Is there anything else you want to
add with respect to Exhibit 11?

A. No, sir, other than it was prepared
by the Minneapolis Marketing Administrator's
office.

Q. And so the record clearly reflects
that, you received a request?

A. I received a request from Mr. Hollon.

Q. And then you referred that request
to?

A. To an individual up in the Upper
Midwest -- or the Minneapolis Marketing
Administrator's office.
Q. And this information was prepared by them pursuant to your direction?

A. At my request, yes.

Q. And as you would testify from their records, to your knowledge?

A. To the best of my knowledge, right.

Q. Did you receive any other request for information for the hearing?

A. Yes. We received a request from Elvin Kinser.

Q. And directing your attention to the exhibit marked 12. The first page of that document, what does that represent?

A. First page of that document are, or page 2 is what you're referring to?

Q. Right, right.

A. That is the letter he sent requesting the data that's contained in this exhibit.

Q. All right. Starting with page 3 page.

A. Starting with page 3, it's using the same areas as before: The Colorado, the Nebraska/Iowa, the eastern Missouri and Illinois, and the Kansas/Oklahoma areas.
followed under that are the supply plants, 

direct receipts by which counties, and the 
total producer receipts.

This is listed, then, for November 
and May of -- well, November -- November of 
the year 2000 and then -- well, November 2000, 
2001, 2002 and 3, and then May, 2001, May 
2002, 3 and 2004. The same information for 
each of those.

This is followed, then, on page 4 by 
a map. First one shows the supply plants and 
where the direct receipt of that milk came, 
from which counties that the milk came from. 
And the color variation of this one is a 
little bit different, there's only four color 
variations listed.

Page 5 is for the distributing plants 
in the month of November 2000. And again, 
there's just four color variations there, same 
In the middle is the total producer receipts 
listed at these distributing plants for all 
four areas combined. 

Page 7 is for November 2002. Page 8, 
November 2003, followed on page 9 is for May
for supply plants, May 2001 through May 2004, respective Mays. This is followed, then, by May 2001 direct receipts at the distributing plants for each of the four regions again.

Page 11 is for 2002 May data. May 2003 is on page 12, followed by May of 2004 on page 13. Page 14 is a listing of the counties for May 2004 by each of the four areas, plus supply plants on the fifth column and milk that was shipped or received directly at nonpool plants on the last column. This carries on, then -- the May data goes to page 23. Then this is followed by November 2003 data on page 24 and continues on to page 43 and then on page 44 we start the May 2003 data, again for the four areas plus supply plants plus nonpool plants.

Q. All right. And that finishes on page?

A. It finishes on page 53.

Q. This material was responsive to the request contained in the letter of November 30th?

A. That's correct.

Q. 2004?
A. That's correct.

Q. Let me direct your attention to the exhibit that has been marked for identification as No. 13. You prepared this exhibit?

A. Yes, sir.

Q. And you prepared it pursuant to a request?

A. Pursuant to a phone call request from Mr. Kinser on Friday.

Q. So after the letter you received a phone call request, and these tables, I believe, correct me if I'm wrong, but I believe there are ten of them?

A. There's actually --

Q. You tell me.

A. Two pages make up one year.

Q. So there's two pages making up one year and there are --

A. Five -- from the year 2000 through 2004, so there would be five years' worth of data here.

Q. Fine.

A. And all it is is information that we post on our website every month updating it,
listing by each of the Federal orders. There
are Class I price, the statistical uniform
price, the PPD if applicable, and the producer
receipts, and the class utilizations: I, II,
III and IV. The weighted average prices and
utilization and total pounds are listed on the
far right-hand column.

Q. We can find this information on the
website?
A. This is found on our website.
Q. You prepared it per request for use
of the hearing?
A. Yes.

Q. This represents what time period?
A. Starting with January 2000.
Q. To?
A. To October 2004.
Q. All right. Then the information is
related there, and I look -- at each of the
end there's a summary of each -- when I look
at the second page, they are two page
documents?
A. Right.
Q. There's a total --
A. For all Federal orders. They were
combined into one, right.

Q. Did you receive -- is there anything else you want to say about that document?

A. Not at this point.

Q. Thank you. With respect to the exhibit marked No. 14, did you receive further requests from individuals for information?

A. This request was submitted by Mr. John Vetne.

Q. And with the letter that appears on the back side of the cover page dated November 11th, 2004, what does that reflect?

A. This is a copy of the letter that was submitted to our office requesting the data that's contained in the pages that follow. And I might add that at this point that the page number that you are looking at the lower right-hand column is the page number as submitted by Mr. Vetne and he set it up in this particular format. So in a lot of cases we plugged the number into the format he had prescribed, and the page numbers at the top are the ones that we'll be referring to.

Q. So he sent the format and you filled in the numbers from the data in your office?
A. That's correct. And we listed the pages at the bottom to show that there were
none missing.

Q. All right.

A. On the first page, or page 3, he broke it down into distributing pool plants
and the size ranges based on the criteria he has listed here. The first one is for
million. I might add Mr. Vetne had a problem spelling million, since you want to --

Q. That's fair.

A. Shame he's not here.

The first one that is equal to or
more than a million pounds, there were two plants. Normally we would consider this
confidential data, with the exception that we did a survey in our office and nobody guessed
the correct two plants. So that's --

Q. We'll except that verification.

A. I doubt if anybody else can in the industry either. But anyhow, what's listed here, then, is the total receipts of all fluid milk products at that particular -- at these two plants in the next column, followed by their Class I dispositions.
The next line is for the range of 15 million but less than 25 million. There were 12 such distributing plants, along with the pounds listed and their Class I dispositions. I think the next line is pretty self-explanatory, doing the same, more than 5 million but less than 15 million, 16 plants, along with their pounds and their disposition. And this is for December 2003. And the same information for July 2004.

On page 4 it's listed as handlers. In this case we didn't look at individual plants as such, we looked at a combination of plants. For instance, the Dean Foods plants were combined into one, the Hiland plants were combined into one, Prairie Farms plants were combined into one and so forth.

Q. As the footnote explains?
A. As the footnote explains, right.

So for the 25 million pounds or more, there were six handlers marketing -- or receiving 430 million pounds with Class I dispositions of 320 million. The same is true, then, for the next range there, 15 to 25, and then 5 to 15, and then the 5.
Q. You stand by the numbers that are in
the documents; in other words, what that says
is what you found from your review of your
office records?

A. That's correct.

Q. All right.

A. The next page, page 5, is a listing
of the pool distributing plant handlers supply
sources. So for that same, by handler size.

Q. Subject to the footnotes?

A. Subject to the footnotes.

Q. Footnotes describe what those terms
mean?

A. So for the less than 25 million
pounds -- or greater than 25 million pounds in
this case, under the 9(c) or cooperative
acting as handler, there were 338.6 million
pounds received; patron producers, or the
handler is paying the producers, there were 67
million pounds received; 14.9 million pounds
from supply plants; and 10.2 from other
sources that were received in bulk form, not
packaged. And this is done also on the same
criteria as far as the size ranges: 15 to 25,
5 to 15, and 5, and below that is the July 2004 data.

The next page is the same data as the previous page but only on a percentage basis. And I might add that on the top one for December 2003 for the 15 to 25 range, that 12 that's listed under "supply plants" should be moved over to the "other source, bulk milk."

Q. So the number under the "supply plant" percent of supplied is zero?
   A. That's correct.

Q. And the number under the column "other source bulk milk" percent of supplied is 12?
   A. That's right.

Q. Thank you.

A. Down on the bottom of that page is the July percentages.

Q. And again, these -- as represented on this from your office information, as modified by the footnotes?

A. That's correct. Page 7 is a listing of the plants. These are distributing plants, not handlers as such, where their Class I utilization was over 90 percent, between 75
and 90 percent, and less than 75 percent. So
we have listed here, and there are no 7(e)'s,
so it's all plants under 7(a). We have 14, 9,
and 8 under the respective classes, with Class
I dispositions listed in the next column,
followed by the percent of the total Order 32
route dispositions, and the last column is the
milk used to produce non-Class I products.
This is data for December 2003, and on the
bottom of that page is for July 2004.
On page 8 we have the producer milk
receipts of distributing pool plants for which
the handler -- or which the distributing plant
is the handler. This is no 9(c), cooperative
as handler milk. Strictly where the handler
received the milk and not as a coop acting as
a handler. These are listed by month from
Q. Let me ask you on that -- on page 8,
you're saying these are proprietary --
something that would be referred to as
proprietary handlers?
A. Proprietary handlers.
Q. What does that mean?
A. That's where the handler --
Q. It's not a coop?

A. It's not a coop, right.

Q. It would be a business in the business of processing milk?

A. That's correct.

Q. But not a cooperative?

A. No cooperative. With the exception of, if you look at Prairie Farms, for instance, they are a cooperative but yet they own plants. These plants -- well, they would not be included in here to begin with, but that would be maybe a little different variation of what you had just described.

Q. Okay.

A. On page 9 we have the producer receipts and utilization by the pounds and by pounds of where the plant is located. In Colorado, all the plants located in Colorado, for instance, had a Class I utilization of 71.6 million pounds; Class II of 17 million; Class III, 65; Class IV, 14.5 million, for a total at the Colorado plants where the producer milk was received of 171.6 million pounds. This is true for each of the states listed here.
And this also includes nonpool plants that are located in the various areas, along with commercial food processing establishments, which we would describe as a nonpool plant anyhow, but Mr. Vetne chose to special subgrade it, but it is included. And then for the three different miscellaneous areas that he has here, these states would be included in each of the areas that he has listed.

Q. And all this information is subject to the footnotes at the bottom?
A. That's correct. On page 10 we have the same data for May 2004.
Q. Let me ask you, just to make sure the record reflects.
A. Sure.
Q. The information that you have plugged in here pursuant to Mr. Vetne's request, you stand by the numbers that are on the documents. I believe, and I just want to make sure the record reflects, I think you misspoke on the last time, you said 71 million instead of 74 for the page 9. So not to belabor the fact, but what your testimony is is what's on
the documents. In other words --

A. That's correct.

Q. Unless you amend it.

A. Right.

Q. What is on the documents is what you found --

A. Right.

Q. -- when you looked in your records and answered Mr. Vetne's request?

A. That's correct.

Q. And that would be true for all of these?

A. That's correct. If I misstate --

Q. It can happen. There are a lot of numbers here.

A. Tell me about it.

Q. You know better than any of us. So thank you.

A. Okay. On page 11 we have the data for October 2004. And at this point I would like to make a correction. On Wisconsin, for Class III, the number should read 268,470,684.
Then that amends the total, then, to 269,922,802. Do I need to repeat that?

   Q. Your Class III you gave a number, right?
   
   A. Right.

   Q. What was the number?
   
   A. Class III should be 268,470,684.

   Q. Then that changed the number on the total?
   
   A. That's correct.

   Q. All this information, as with the others, subject to the footnotes?
   
   A. That's correct. On page 12, Mr. Vetne asked for a little different breakdown on the distributing plants as listed. We chose to maintain the areas that we had previously selected from the standpoint that to switch them around could possibly reveal some data that we consider confidential.

   And in looking at the whole picture, the handlers compete more readily with producer milk in the areas which we have originally selected, so we asked him to look at the Dean's exhibit for the months that he
has listed here of January, May and October, or at least close to it.

We weren't -- since he's asking for a wealth of data, it was almost impossible to gather every month that anybody's requested, but we gave it our best shot in the time constraints that we had. If we had more time, we would be glad to do more. But it was impossible for us to do all the months that were requested.

So in that -- with page 12 and page 13, I might add, too, that the DFA exhibit would also include some of the data he asked, especially for January 2004. And on page 14.

On page 15 we have listed the producer milk receipts at pool supply plants, or as he listed here 7(c) supply plants, which is the pool supply plant definition, and utilization at these plants for the years -- for the months January 2003 through October 2004. First column is the Class I utilization followed by Class II, III, IV and then the total.

Page 16 is the supply plant receipts and dispositions. First column is the
producer milk for January 2003 through October 2004, followed by the pool plant receipts. In other words, these are receipts from another supply plant. And the next column is from other Federal orders and followed by nonpool plant receipts.

The dispositions, first column, is to the pool plants followed by two other Federal orders and then dispositions to nonpool plants.

Page 17, the answer to that one was easy, "None."

On page 18 is the producer receipts by 9(c) handlers, excluding supply plant milk. On the first column is the Class I and it's for January 2003 and goes on down to, again, October 2004. The utilization of Class II, III and IV are listed.

The unclassified is milk that's been shipped to distributing pool plants and would be allocated at the respective distributing pool plants. And then the total is on the right-hand column -- right, totals on the right-hand column of 9(c) milk.

On page 19 we have the producer
receipts by the type of handler. First column
is the 9(c) followed by the supply plants
followed by the distributing pool plants where
they have patron receipts. The first column,
then, for January 2004, for instance, was 56.4
percent of the total that was pooled, followed
by 12.7 percent of the supply plants, and 30.9
of the distributing pool plants. Together
would equal 100 percent. Again, that goes
through January -- or October 2004.

On page 20, which actually continues
on, then, to page 21 through page 47 is a
listing of the nonpool plants which received
producer milk directly. In other words, where
the producer milk was diverted to.

Continuing on, then, on page 48, it
was requested to break down the largest --
three largest 9(c) handlers by volume and to
groups. So for Group 1, being the three
largest, followed by the Group 2 being the
next three largest, and so forth on down.

So for January 2002 for Group 1, we
show the Class I pounds and followed by the
Class II pounds, the III pounds, the IV
pounds, and the unclassified again. And total
across is, in this case, 1 billion pounds.

On the second grouping, the next three largest, the numbers I think pretty well speak for themselves as you go across. And followed, then, by the Group 3, which is the groups -- or the plants that would be the -- or the 9(c) handlers that are the seventh through the ninth largest.

I might add that in some of these a little farther down there was one other one or sometimes two other ones, so they were also combined in the last groups. This goes for January and July of 2002, January and July of 2003, January and July of 2004.

On page 49, he wanted the estimated monthly volume of producer milk that would have been depooled to meet the proposed diversion limits of 75 to 80 percent -- or 75 or 80 percent, I should say. He requested for January of 2002 through October 2004.

As mentioned above the footnote at the bottom, prior to March 2003 the data was not calculated due to an order amendment which eliminated the pyramiding of some of the -- well, eliminated some of the plants. And that
amendment became effective March 1, 2003.

Data prior to that would be, as far as we're concerned, meaningless and it would not indicate what is truly going on at the present time.

So for March 2003, we list the pounds pooled and then the estimated volume that was -- would have been depooled to meet the either 75 or 80 percent criteria. And this goes on through October 2004.

The next page is in regard to Proposal 5, and it lists either the 65 or 75 percent, depending on the month. And again, the pounds pooled are listed followed, then, by the estimated volume that would have been depooled to meet the either 65 or 75 criteria, depending on the month.

On page 51, the request was the monthly volume of producer milk pooled by supply plant handlers at specified percent ranges of shipments to distributing pool plants. Under the first column it says less than 20 percent, so in other words, less than 20 percent of the milk was -- of this volume of milk was moved to -- it was from plants
that moved less than 20 percent to
distributing pool plants. So in March of
2003, we have the 89,101,000 pounds, that was
the milk that was pooled at supply plants that
shipped less than 20 percent so distributing
pool plants.

The next column is identical. In
other words, there was nobody in that area
between the 20 and 25 percent, so the numbers
stayed the same. And the last column -- or
the third -- next to the last column is the
less than 35 percent, so again, the number
would increase because we had additional --
some additional plants. And then the last
column is the Order 32 supply plant milk,
total supply plant milk that was pooled. And
this goes on for March of 2003, again because
the order amendment, and through October 2004.

On page 52, looking here at the
monthly volume of additional supply plant
shipments to distributing plants that would be
required under Proposals 1 and 5. So for
listing in March, again, we did not do data
prior because of the order amendment.

In March 2003 under Proposal 1, what
that's showing is 13,058,055 pounds of
additional supply plant milk that would
have -- that would have been required to be
shipped.

Under Proposal 5, is the next line
over -- or the next column over, showing it
was 50.8 million pounds, and the number of
plants that would have been effected are also
listed. And this data goes on through October
2004.

On page 53, we list here the
estimated total producer milk eligible to be
pooled by handlers that was voluntarily not
reported as pool milk. In other words,
depooled milk. And this is listed -- and this
is not separated, as he requested, under 9(c),
supply plant handlers, or other plant
operations, because the data is not kept in
the manner in which we could extract it to
meet this request. So what is listed here are
the depooled pounds by all handlers that were
pooled.

And that includes Mr. Vetne's
request.

Q. Now, with respect to the documents
that you have just talked about, now I'm referring to Exhibits 9 through Exhibit 14, these were prepared by you or at your direction from records of your office or other offices of the Market Administrator?

A. Yes, sir, they were.

Q. And they were prepared at the request of outside parties, that is non-governmental people, some of this information was requested by individuals or companies?

A. That's right.

Q. And you prepared this to the best of your ability pursuant to those requests?

A. Yes, sir.

Q. From the information that we have described, the data sources are indicated on the documents, they come from official records of your offices?

A. Yes, sir.

Q. And they are not presented for or against any proposal?

A. That's correct.

MR. STEVENS: I don't have any further questions of the witness --

A. May I --
Q.  (By Mr. Stevens) Do you have anything that you would like to add?
A.  Yes. May I make one correction?
Q.  Sure.
A.  On Exhibit No. 10, Elvin Hollon, the DFA request on page 13, I stated before that the location used was $1.75. That should be $1.60.
Q.  What page?
A.  Page 13 on Exhibit 10.
Q.  Okay. Now, what's your correction?
A.  I stated that the location adjustment which was used was $1.75. It should have been $1.60.
Q.  Where is that reflected on the document?
A.  That would be reflected in the recomputation of the producer price differentials by adding back in Idaho milk.
Q.  So on the document, you don't see the numbers that you just said, though?
A.  Right.
Q.  Just repeat them so I can make sure I have my document right.
A. The correct location adjustment
stated should be $1.60, not $1.75.

Q. It's not on the document, make sure
that's clear in the record.

A. Right.

Q. But you are now amending the document
by your remarks?

A. That's correct.

JUDGE HILLSON: Are you done
with this witness, Mr. Stevens?

MR. STEVENS: That's all I
have. And I certainly intend to offer these
to be admitted. I know the witness is subject
to cross-examination.

JUDGE HILLSON: And I'm
thinking it might be a fine time for our
afternoon break. So let's take exactly, by my
watch, we'll come back at 3:15.

(Recess.)

JUDGE HILLSON: Who wants to
begin the cross-examination?

MR. ENGLISH: I think he has
something to say.

A. May I make one more correction to the
Market Administrator's Exhibit No. 9. On page
23, over on the right-hand column down towards
the bottom, the total producer receipts there
were also misstated. For the month of October
they should read the same as what's contained
back over on page 9.

So in other words, total producer
receipts for October should be 1,204,175,137,
and the total year to date is also incorrect,
it should be 10,115,576,193. I'm sorry about
that.

JUDGE HILLSON: Mr. English.
Once again, identify yourself and who you're
representing.

MR. ENGLISH: Charles English
for Dean Foods.

CROSS-EXAMINATION

BY MR. ENGLISH:

Q. And first, sir, an obvious thank you
for this wealth of data. Appreciate it very
much. I know it was a lot of hard work,
especially on short notice.

A. You're welcome.

Q. I'm going to try to take this in
order so we don't jump around from exhibit to
exhibit, but it may turn out it doesn't work
out that way.
I would like to start with Exhibit 9 and have a short discussion, at least, on using page 13 as a reference, Table 8, which is the Other Class I Utilization, Class I to nonpool class. Could you tell us what kind of milk or what kind of transfers might occur for Class I to be going to nonpool plants?

A. This would include package transfers to other Federal order plants to partially regulated plants to almost anybody else other than a pool plant that's pooled under the Central Federal order, and it could also include sales to producer handlers. And I think that's probably about it at that point.

Q. If it is bulk milk that has been received at a nonpool plant, let's say a plant outside the marketing area that does not qualify as a pool plant and is processed into Class I, is someone responsible to the Central order pool for the Class I price on that milk?

A. Yes, they would be.

Q. Turning to page 18, the Class III. Looking for a moment as one example, in February of 2004 there was almost 621 million pounds of Class III and in June there was 636
million pounds of Class III, but in between
for March, April and May, we had quantities
that were as low as 20 million pounds;
correct?
A. That's correct.
Q. To your knowledge, did those class --
did those nonpool plants that normally process
Class III simply stop processing milk into
cheese during those months?
A. No, they do not.
Q. What, in fact, actually happened that
explains these numbers?
A. Well, there was a lot of milk
depooled, and I would assume at this point
most of that milk that was depooled was milk
that was utilized or would have been utilized
in Class III or at these plants that make the
cheese products.
Q. And you've now used the term depooled
with me but also in answer to questions from
Mr. Stevens and also in some of the exhibits.
Could you, for the record, tell us what the
term depooled means?
A. Well, when the price alignment gets
to be such where the coop or even a handler,
for that matter, a distributing pool plant
handler decides that it would cost or you
would have to pay into the pool because of a
higher Class III price, he elects not to pool
that milk, or as we call depooling.

Q. And that is what you mean when you
have other documents and exhibits where you
made assumptions as to milk that would have
been associated with this market except for
the fact it was depooled?
A. That's correct.

Q. Now, at a pool distributing plant,
milk received at a pool distributing plant
such as the Anderson-Erickson operation in Des
Moinces, Iowa, can it be depooled?
A. No, it cannot.

Q. And the reason why it cannot be
depooled is because Class I pool distributing
plants are fully regulated pursuant to the
regulation, all the milk received there is
regulated; correct?
A. That's correct.

Q. Turning to page 27 of Exhibit 9, I'm
also going to reference here one of your
documents which listed a listing of producer
handlers. And for the moment I just want to understand, when you list producer handlers, do you include plants that otherwise would also be exempt plants?

A. There's a fine line definition between exempt plant and producer handler plant. To be an exempt plant you have to have less than 150,000 pounds of Class I sales. We look upon it if a producer handler is a bottler who markets less than 150,000 pounds of Class I sales, we will include him as a producer handler, because he is responsible all the way from the cows to distribution of the milk.

Q. And so the other chart you actually list the name -- I don't have it in front of me right now -- you actually list the name of producer handlers, some of those may also turn out to be exempt plants?

A. Well, if you want to define it as an exempt plant because they have less than 150,000, that's correct.

Q. For purposes of page 27, you've got listed a column Pacific Northwest, Southwest, and Arizona/Las Vegas, Class I sales in such
an order by nonpool handlers. Once the
Western order was terminated, did the
treatment of processing plants located in the
Western order for this table change or did
they remain included in that column?

A. They did not remain included in that
column. Two of them moved to the partially
regulated column and one of them moved to
the well, one of them did stay in that
column because he was pooled under the
Southwest Federal order. Two others went to
the partially regulated.

Q. Turning to page 29 for a moment and
your listing of Class I route sales by Central
order pool handlers. The out-of-area sales
into the Upper Midwest appear to have changed
rather significantly from October to November
of 2003.

A. Right.

Q. Without stating the entire hundred
percent of that was due to any one entity,
would it be fair to say that one difference
between October and November 2003 was the
change in pooling status of one plant as
listed in your later data?
A. That's correct.

Q. It's not, again, that suddenly milk just stopped being sold in the Upper Midwest, it is probably now showing up in the Order 30 data?

A. That's correct. Of course, you'll see the same increase in area sales from Order 30.

Q. Thank you.

A. Or from the Upper Midwest Federal order.

Q. So looking back on Table 14 on page 26, we see an increase of October to November of Upper Midwest sales pursuant to what you just said?

A. Yes.

Q. Thank you very much.

Turning to page 67. And for the moment, a clarification, I think everybody in this room probably knows, but for the record in case somebody later is looking at this and wondering, there is a period of time prior to December '01 when there is no milk marketed from California and there's a period of time after, for December '03, for which there is
zero milk marketed from California.

Were those marketings from California the result of pooling regulations that have been changed since that time?

A. Correct, effective March 1st of 2003.

Q. And with that change, the economic incentive to pool that California milk was changed and as a result that California milk is no longer associated with this market; correct?

A. Correct.

Q. It's not, again, that that California milk simply ceased to exist, it's whatever economic incentive it had has been altered; correct?

A. That's correct.

Q. One last question on this exhibit, page 93. I want to tie this back. This is the list of producer handlers that some of which may also qualify as exempt plants; correct?

A. That's correct.

Q. And turning to the next page -- forget what I said about the last question -- are any of these plants partially regulated
during 2004 the plants that you refer to that
became partially regulated that had been
regulated under the Western order?

A. Yes. The West Farm Foods down in
Boise, Idaho, and the Gossner Foods at Logan,
Utah.

Q. Thank you. Turning to Exhibit 10,
page 13. No, you already covered that.

Page 30. You have a Net Class I
Contribution to the Pool. Is there a reason
why you didn't use the term Gross Class I
Contribution to the Pool?

A. The gross is actually the Class I
value as listed there.

Q. And so that would be what the -- the
net class contribution -- I guess what I'm
getting at, are there times when the -- a
Class I plant, when it reports on its milk,
may actually draw out of the pool?

A. Yes, that has happened.

Q. Does that happen at times when we
have depooling?

A. Yes.

Q. For instance, did it happen -- when
you look at March and April of 2004, the net
1  Class I contribution to the pool is under $2
2  million.
3  A. Uh-huh.
4  Q. Were there plants during those months
5  that actually drew from the pool -- Class I
6  plants that actually drew from the pool?
7  A. Yes, I'm sure there were.
8  Q. Was any of that milk that was Class I
9  milk received at nonpool plants?
10  A. I'm sure there was some Class I milk
11  that was received at nonpool plants, because
12  of the small amount that may have moved to
13  producer handlers, but excluding that, no.
14  Q. I have no questions on Exhibit 11.
15  On Exhibit 12, and just looking at
16  page 14 as an example, but this is the
17  information you provided in the answers to
18  Mr. Kinser's questions about the pounds, and
19  this is a little different, I think, from the
20  answers to the questions for Mr. Hollon.
21  As I understand it, what you've
22  listed here, for instance, looking at the
23  county of Fremont, Colorado, there is
24  2,361,293 pounds Colorado, that would be
25  Colorado distributing plants?
1          A.   That's correct.

2          Q.   And then the final column, there's
3      450,673 nonpool, if I've got the right line
4      for Fremont.

5          A.   Right.

6          Q.   So the total number of pounds
7      associated with Order 32 in May 2004 would be
8      those two numbers added together; correct?
9          A.   Yes, should be.

10          Q.   But if you listed milk under nonpool,
11      that means it was received at a nonpool plant?
12          A.   That's correct.

13          Q.   And if you listed milk at a supply
14      plant, it was at least initially received at a
15      supply plant?
16          A.   That's correct.

17          Q.   You don't, for this table, trace it
18      on to where it ended up, whether it was
19      distributing or nonpooled?
20          A.   No, strictly what was received at the
21      supply plant.

22          Q.   And for this purpose for May 2004,
23      are all these supply plants located within the
24      marketing area?
25          A.   No, there's one that's outside the
marketing area, if I remember right.

Q. We would not know looking at page 14 or thereafter whether the pooled plants were in or outside the marketing area; correct?

A. That's correct. Other than going through and identifying each county that's in the marketing area and out of the marketing area.

Q. But the county of the -- I'm sorry. The county is the county of the milk production or the county of the location of the plant for this purpose, for page 14?

A. No, it's -- you're right, it's strictly the location of the milk production.

Q. Turning to Exhibit 13. I'm sorry, 14. I believe I heard it, just to make clear, on page 7 of 53, which has John Vetne's five at the bottom, you -- he prepared the chart that you filled in; correct?

A. Right.

Q. And his chart was number of plants for 7(e) units?

A. Uh-huh.

Q. That's correct?
A. That's correct.

Q. Did I hear you correctly say there are no 7(e) units?

A. That's correct.

Q. That's fine, thank you. On page 9 of 53, 10 of 53 and 11 of 53, in a number of line items, for example, Wisconsin Class I, you have a hyphen.

A. Right.

Q. I assumed that was zero --

A. That's correct.

Q. -- but I wasn't sure the record -- that's correct, all of those hyphens are zeros?

A. That's correct.

Q. And that's true for pages 9, 10 and 11; correct?

A. Same is true there too.

Q. And page 18 of 53, producer milk receipts by 9(c) handlers, excluding 9(c) supply plant milk, you have Class I, II, III, IV and unclassified. And I'm sorry, maybe you told us what unclassified was and I wasn't paying attention. What does unclassified mean in this instance?
A. These are shipments directly to distributing pool plants and the milk is classified when it is received at the plant. So our way of keeping track of the class utilization, we do not -- we would have to do a bunch of prorations to come up to it for the individual 9(c) handlers, and it's --

Q. You just don't do it that way?

A. We just don't do it that way, correct, that's why we list it as unclassified.

Q. But for purposes of this and for the record, there could be a footnote that reflected these are shipments directly to pool distributing plants?

A. Pool distributing plants, that's correct.

Q. And now I confess I got very confused by page 19 of 53, especially when I tried to compare it to -- and maybe I'm not supposed to compare it -- to page 8 of 53. Page 8 of 53 was producer milk receipts of pool distributing plants for which the distributing plant is a handler.

And I guess I would have thought that
number would have corresponded to the last

column, what is page 19 of 53, distributing
plant patron milk receipts. So I'm not clear
about something and maybe you can set me right
about which -- what each one means.

A. On page 8 of 53 is reference, then,
to where the proprietary is paying the
producers, receipts from milk directly from
producers and takes care of the pooling of
that producer milk. Whereas, on page 19 of
53, the 9(c) handler there, that number would
not be reflected over on page 8 of 53.

Q. That's the 9(c). What about the
column for distributing patron milk receipts?
A. That number would be included as part
of that, then.

Q. So for instance, for January of 2003
on page 8, there was producer milk receipts of
pool distributing plants for January of 2003
of 71,365,081?
A. That's right.

Q. Which column, if any, on page 19
would the 71,365,081 appear?
A. It would be included in the last
column there.
Q. The last column of 517,396,553?
A. That's correct.

Q. What is the difference -- yes, what else, what is the 400, whatever, 46 million, if it is not --
A. On this particular table, the 9(c) is also included in the distributing pool plants as distributing pool plant receipts direct from farms. Whereas the 9(c) is where the cooperative itself, it would be the milk that was diverted by the 9(c) handlers.

Q. I'm still just focusing on column 3. Column 3 of page 19, which has 517 million, I understand that includes 71 billion plus of producer milk receipts of pool distributing plants for which distributing plants is not the handler. I guess what I'm wondering is, what makes up the other 446 million in that third column?
A. The additional 9(c) milk.

MR. ENGLISH: Okay, you got it, I don't.
A. The 9(c) is only what went to nonpool plants in this case; whereas, under the distributing plant column, it includes the
9(c) plus the milk that was received for which
developing plant was the handler on the
producer milk.

Q. Let me see if I'm following you at all. And this is my fault.
A. No.
Q. Would the 446 million, would that
difference also appear in column one? Is it assumed in column 1?
A. No, it is not. It would be added to column 1 if you want to look at -- it's all 9(c) milk.
Q. Is there anywhere else where I would see a breakdown of this 517 million so -- I'm trying to understand what --
A. Right, I understand where you're coming from, but...
Q. I'm almost there. Is it the unclassified? I just looked at it, I'm wondering --
A. It would come close to be the unclassified.
Q. If you take the unclassified on page 18 --
A. Right.
Q.  -- and add page 8, so for January 2003 you add the 446 million to 71 million, is that how you come up with the 517 million?

A.  That should come pretty close, right.

Q.  Thank you.

A.  We can blame Mr. Vetne for not setting up the table properly.

Q.  Especially since he's not here.

A.  Exactly.

Q.  I understand he's stuck in Chicago.

A.  Poor soul.

Q.  If we turn to page 49 of 53, Mr. Vetne's page 20.  Did he leave out the months of July, August and September, or did you just list months for which the months would have impacts?

A.  We just listed the months where there would be an impact, except for -- well, originally we had this set up on a spreadsheet that showed both these together, page 50 and 49 together, and that's the reason we have zeros under there for July and October.

Q.  Of 2004?

A.  Right.  But the months not listed did not have any.  Should be zeros also.
Q. And just for clarification, the first column is what was pooled, and given Mr. Vetne's request, the second column is what you estimate would -- of that portion of column 1, what would not be pooled in order to meet the diversion limitations?
A. That's correct.
Q. And again, if there's nothing listed, your estimate was zero?
A. Correct.
Q. Turning to page 52 of 53. Again, I understand that Mr. Vetne set up the chart. The chart is titled Monthly Volume of Additional Supply Plant Shipments to Distributing Plants That Would Have Been Required Under Proposals 1 and 5. That is it would have been required or you can opt to pool less milk; correct?
A. That's correct.
Q. If you pool less milk, these numbers would not necessarily apply, you wouldn't have to ship more milk if you chose to pool less milk --
A. That's right.
Q. -- because of the rule?
A. That's right.

MR. ENGLISH: Thank you, that's all I have.

JUDGE HILLSON: Any other cross-examination? Mr. Beshore.

CROSS-EXAMINATION

BY MR. BESHORE:

Q. Mr. Stukenberg, let me join in, I'm thanking you and your staff --

JUDGE HILLSON: Please identify yourself.

MR. BESHORE: Marvin Beshore for DFA and Prairie Farms.

Q. (By Mr. Beshore) I thank you and your staff for this wonderful amount of work you've done for our benefit and our request.

A. Thank you.

Q. Let's start with Exhibit 9. First of all, where you identify, starting on page -- on Table 1, the pricing point of reference is Jackson County, Missouri. That's Kansas City, I take it?

A. That's correct.

Q. And that's considered like the base point for your announced prices for the order?
A. That's right, base point.

Q. When you go, then, to Table 5, on page 6, the column producer price differential, can you explain or define for the record what the producer price differential is in the order?

A. Well, it's basically what is left after all the milk has been priced. We determine a total value for the milk that is received by handlers or pooled by handlers based on how the milk is used. From that we subtract away the value of the producer milk or the value of the butterfat in the producer milk, subtract away the protein, subtract away the other solids, subtract any adjustments for somatic cells, whether it be positive or negative, and what is left, then, is what is -- and location of adjustments, I forgot about them, but then what is left after all these adjustments are made is what's left over of the total value of the milk and is determined to be the producer price differential.

Q. So in the column for producer price
differential on page 6 of Exhibit 9 where you have negative numbers, how do they arise?

A. Because there was more value in some of the component -- on the total pounds of the component milk that was pooled, and once the milk -- or the price -- the monies have been paid out in terms of, say, the protein and the butterfat, the other solids, what's left happens to be negative.

Q. So then you, in essence, with a negative producer price differential, you blend down the values in the pool by that amount per hundredweight?

A. Right. It's on a per hundredweight basis. Others are on a per pound basis.

Q. Let's turn to page 9, Table 7 of Exhibit 9. I want to, starting with the numbers on this table, discuss this phenomenon of depooling and how it works in Order 32. When you look at the total producer milk pooled, the right-hand column of page 9, and you see the large differences in the pool, say, between May and June of 2004, those are reflective of what we call depooling and what you've defined to Mr. English as depooling?
A. That's correct.

Q. Now, how easy or hard is that in Order 32? These numbers move in huge percentages and from month to month. Is it a matter of simply paper entries, in essence, on a handler's report?

A. As far as we're concerned?

Q. Yes.

A. That's basically all it is.

Q. And for the handler, is that all that's pretty much involved?

A. It's a matter for deciding which milk needs to be depooled and where it's going. He has the obligation that at least one day's production be pooled somewhere along the line. So, you know, it's a little more responsibility on the handler's part than it is on ours, because ours is just a matter of receiving his pool report, and then when we go to audit, then if there is some that is reported, that has to be verified.

Q. When you say he has the obligation of one day's production being pooled, can you explain how that works in Order 32, please?

A. To maintain pool status, at least one
day's milk production has to be received at a pool plant sometime during the month.

Q. And what if a handler's -- if none of a producer's production is received at a pool plant during a month, what happens?

A. Then he has to requalify by being received at a pool plant either the following month or whatever month they decided to bring the producer back on.

Q. So if we turn to some later tables in Exhibit 9 -- let me find the right one I want to ask you about. Let's go to Table 29, page 60. If you look in the Wisconsin column for 2004, just compare say February and March, February there were 1,384 producers, farms in Wisconsin, with 230 million plus pounds of milk pooled on the order. Is that what that shows?

A. That's right.

Q. And then in March there were actually, what, another 130, 128 farms, but only less than 10 percent, or about 10 percent of the milk production pooled, 24 million pounds pooled; correct?

A. That's right.
Q. And then you get down to June when we're back to 236 million pounds pooled and 1,352 farms. The numbers of farms reflected there vary much less than the pounds of milk marketed. Is that --

A. Yes, much less.

Q. And does that reflect, perhaps, the fact that one day's production from many of those farms is being pooled just in order to have the right to pool the rest out the next month if it works?

A. That would be correct, right.

Q. Now, in some instances I've noted if all of the -- if any given month there's no production from farms in a given county that occurs somewhere in some of these exhibits, or -- it's pooled but it all goes to nonpooled plants, okay, in order for that milk to come back on the order the next month, when does it have to be delivered to a pool plant?

A. It can be delivered any time during the month, but we're not going to start counting it as producer milk under the order until it is received at a pool plant.

Q. So in order for the entire month to
be pooled, it would have to be delivered on
the first day of the month?

A. That's correct.

Q. I've noted in the data with respect
to Class II utilization, Class II volumes in
the order -- Class II volumes as opposed to
utilizations, that they -- and I don't know
what table it's on here, but they were made
relatively flat, relatively steady during
these months of large fluctuations in Class
III volumes.

Does that reflect, in part, the
substantial -- that those volumes are
substantially processed at pooled distributing
plants?

A. Yes and no. Some of it is and other
parts of it is sometimes some Class III
price -- or Class IV price is high. Likewise
the Class II price will be and handlers elect
not to pool all the milk that goes to Class
III -- or Class II or Class IV plants.

Q. In any event, the Class II production
that is at a pool distributing plant,
regardless of the price relationship of the
class prices in the order, must be pooled?
A. That's correct.

Q. With respect to California, Mr. English asked you about the end of California pooling in Order 32 being effected by the amendments that occurred effective March 1, 2003.

A. Right.

Q. Your data shows that in the year 2000, for instance page 67, Table 33 of Exhibit 9, in December 2000 there were no poolings from California on Order 32, but there are poolings, then, in December '01 and '02. Was there any difference in regulations under Order 32 in the year 2000 versus '01 that could account for there not being California milk pooled?

A. No, there wasn't.

Q. To your knowledge, was there any change in the regulations of other orders such as Order 30 that effected the ability of California milk to be pooled there prior to the time of when Order 32 was changed?

A. Somewhere along the line there was. The exact date I can't recall, but yes, there was an amendment that went into effect in the
Upper Midwest Federal order and, consequently, some milk may have ended up being pooled down here for that very reason. I can't say for sure, it would be speculation.

Q. Well, setting aside the reason, I don't want you speculating about it, did you observe that in Order 32, after the Order 30 regulations were changed, more milk from California got pooled on Order 32?

A. That's correct.

Q. Let's turn, then, to Exhibit 10. If you look at page 14 of 42 on Exhibit 10, if we look at the month of April 2004, which had the largest negative PPD in Order 32 -- by the way, that's the same -- the 397 on this table, it's the same as the 402 figure on the other one but for the rounding factor, or the --

A. Right.

Q. -- reserve.

A. Settlement fund.

Q. Now, you show in the right-hand column the month of April on this exhibit that the producer price differential would have been, what, minus $1.82 rather than minus $3.97, applying the assumptions you were asked
to apply; is that correct?

A. That's right.

Q. So it was -- if additional milk had been pooled, if the Class III milk that was depooled had been pooled, the change would have been about $2 for the -- $2 per hundredweight for the producers in the pool who didn't have the opportunity to depool?

A. That's right.

Q. By the way, in making estimates of this sort, were you able to do them with some precision because of the fact that you have the one day pooling requirement and you can identify producers who are likely to remain on the order and had been associated with the order?

A. That's correct, right.

Q. And you applied that when you were making these kinds of estimates?

A. That's right. Producers with a history of being pooled on the Central Federal order and based on previous months' marketings and so forth, right.

Q. Now, would you turn to page 16 of 42 in Exhibit 10. The top half of the page, DFA
Request No. 5, I want to make sure we're following this correctly. Does this show that in month one, assuming that the 125 percent limitation in the proposal in the hearing, which is Proposal 2, assuming that the 125 percent in Proposal 2 was applied, did you calculate how much a handler, in effect, could depool in month one and have 100 percent repooled in month four?

A. That's correct.

Q. So a handler, even with this proposal being adopted -- by the way, it doesn't eliminate the pooling?

A. No.

Q. And it would allow or enable 49 percent of the milk to be depooled in month one and have it all back on in the fourth month?

A. That's right.

Q. So the three month average of 35 percent is, what, just an arithmetic average?

A. Just a simple average.

Q. Of how much milk during those, what, three months could be off?

A. Uh-huh.
Q. Now, if you go to page 19 of 42 in Exhibit 10. Can you just tell me, the bottom three lines on this page and the next page, minimum charge, maximum charge and range, can you just explain what those are?

A. Well, for the minimum charge, for instance, under Colorado, if you look at the .323, if you look somewhere up in the column you will find a .323.

Q. Is that just the minimum average per month for the state?

A. Average for the state, right, or -- yeah, for the state.

Q. So those are just observations with respect to the data that's set directly above it?

A. That's correct. And the whole idea is to show the range down there, that there's not a whole lot of variation from the -- however many months are listed here.

Thirty-two.

Q. On the second page of this table, which is page 20 of 42 in Exhibit 10.

A. Okay.

Q. North and South Dakota are combined.
Q. Why was that?
A. Because we did not keep data where we separate out the two states. A lot of this is based on data that we had readily available due to the information we were required to provide Washington concerning mailbox price surveys. We had it broken down by these states and it fit right in that.

Q. Could you turn, then, to page 31 of 42 in Exhibit 10. The January 2004 information at the top, I understood you to say that was initially requested by four months?
A. That's correct.
Q. Are these estimates calculations of the potential impact of Proposal 3?
A. Foremost's proposals?
Q. I think so.
A. Yeah, that sounds right, now that you mention it.
Q. My question is that proposal, I believe, provides for a milk reload station
provision in the order?

A. Right.

Q. Was that factored in in any way?

A. This was not factored in. The milk reload portion was not factored in, correct.

Q. So essentially what this represents is just an identification of the volumes of milk in January 2004 which, what, moved through supply plants to distributing plants and received Class I classification?

A. That would be correct.

Q. And the assembly credit was, what, $0.10 a hundredweight?

A. That's correct.

Q. And transportation credit was what?

A. It was $0.30, but then it's adjusted by the differences in the Class I location differentials.

Q. Based on mileage from the --

A. And mileage, right.

Q. From the supply plant?

A. Transferor to transferee. From the supply plant to the distributing pool plant.

Q. On page 41 of 42 in Exhibit 10 there's an 80 percent number in the middle of
A. Yes.

Q. What is that? 80 percent of what?

A. Like I explained before, we started out with the gross Class I. And this particular case was 22 million pounds and ended up with a remainder of 20 million. And then the actual physical receipts down below happened to be 25 million pounds exactly. So the 20 million divided by 25 million gave us the 80 percent.

Q. The 80 percent appears above the 20 to 25, it's actually derived from the information below it?

A. That's right.

Q. What proposal did you understand this information to be related to? The assembly credit?

A. Yes. Proposal 3.

Q. I have a question or two on Exhibit 12, which you -- I may have a question or two in Exhibit 12. If you'll look at, for instance, page 22 of 53. This is, again, county, and you touched on this before, but make sure I understand. If you look at those
constant counties towards the bottom, Douglas, Dunn, Eau Claire, Fond du Lac, the only dispositions here are in the nonpool category for those counties, maybe Dodge also, if I'm looking at it right, would that -- was that a month of depooling, to your knowledge, May 2004? Assume it was. If it was a month of --

A. Month of depooling?

Q. If you've got 100 percent of delivery at nonpool plants, how is the milk pooled, given the one day requirement you mentioned?

A. It's pooled by the cooperative being the handler on the milk and -- how's the others that work? Cooperative on the percentage basis receives -- or moves enough milk to a distributing plant to qualify those producers as producer milk. But --

MR. STEVENS: May I ask: Do you need a minute maybe to consult with your people in your office? It's important to ask.

THE WITNESS: Yes.

JUDGE HILLSON: You need say who you are.

MR. STEVENS: I'm sorry.

Garrett Stevens.
So the record is correct, I mean,
maybe we should give him a chance to consult
with somebody from his office, if that's okay.

(Off the record.)

JUDGE HILLSON: If it's not
within his knowledge and somebody else can
testify to that, but either way. I mean, no
one seems to object, so. He's just filling in
a gap over here.

MR. BESHORE: I certainly have
no objection.

JUDGE HILLSON: I haven't
decided, somebody coming over here and
whispering the answer in his ear, but...

MR. BESHORE: Whatever it takes
to get this figured out.

JUDGE HILLSON: That's fine.

A. One day's production is to get
qualified. And once he's qualified, he can
then move to nonpool plant -- nonpool plants.

Q. (By Mr. Beshore) So there is a "once
and done" --

A. "Once and done" in that regard,
right.

Q. And if that milk is then depooled?
A. Then it needs to come back as being received at a pool plant.

Q. But when we observe these situations where there's no liberties to pool plants from all the producers in the county in a given month --

A. Right.

Q. -- they remain in the pool pursuant to the initial association?

A. Right, because they have to be pooled at least one day. Not necessarily received at a plant, but at least pooled one day.

Q. Let's turn to Exhibit 14, then, the information provided at John Vetne's request. On page 7 of 53, Vetne page 5, there was a question about 7(e) units. And I know this is the categorization which John placed upon it, but could you just tell us what 7(e) units are under your order?

A. These are distributing pool plants that qualify based on the percentages, if I remember right, based on percentages of the previous 12 months that they delivered the previous 12 months at the required percentages, and they can automatically be a
supply plant for the months that remain, or
any months after that until they notify in
writing to do otherwise.

Q. And nobody's taken advantage of that,
I think was your testimony?
A. Not at this time, no. There has been
in the past.

Q. Now, on the same exhibit, the
right-hand column, milk used to produce
non-Class I products, are those essentially
the aggregate volumes of Class II or maybe
even Class III or IV production at
distributing -- pool distributing plants in
the order?
A. That would be correct, right.

Q. Going to page 9 of 53 in Exhibit 14,
and this is just for clarification for my
benefit. The R-2's and R-1's in Kansas, does
R-2 mean restricted with two entities?
A. That's correct.

Q. And R-1 means restricted by one
entity?
A. That's correct.

Q. I'm sure you testified to that
before, but I missed it.

Go to page 19 of 53. Mr. English asked you a number of questions about this. I think I've got it now and I want to make sure if I do. And I know that these -- again, you were working with forms that were supplied to you and labels that were supplied to you, but in the first column that says 9(c) handlers, those volumes, as you have presented them here, are actually 9(c) handler volumes to nonpool plants?

A. That would be correct, right.

Q. So if we added to nonpool plants on that, it might help clarify the totals going across here.

The second column is deliveries that are --

A. Receipts at supply plants.

Q. Receipts at supply plants.

A. Right.

Q. Just receipts at supply plants and no other receipts of supply plant handlers?

A. That's correct.

Q. So we can call that one receipts at supply plants if we wanted to instead of
supply plant handlers.

A. Uh-huh.

Q. And the third column, then, is producer milk received at distributing plants, whether it be the distributing plants of independent producers or 9(c) cooperatives?

A. That's right.

Q. Turn to page 52 of 53, then. Again, I think Chip English may have asked you about this, but I want to make sure I understand how these numbers have been calculated.

For the column on Proposal 1, the March 2003 number, 13,058,055, that is the volumes of additional shipments from supply plants to distributing plants that you calculate would have been required to have those supply plants that were in the order continue to have all their milk pooled under the additional 5 percent shipment that would be required under Proposal 1?

A. That's correct. Be the additional.

Q. Just the additional?

A. Just the additional.

Q. And you did the same thing with whatever the percentages were that were
required by Proposal 5?

A. That's correct.

MR. BESHORE: Thank you,

Mr. Stukenberg.

THE WITNESS: You're welcome.

JUDGE HILLSON: Anyone want to cross-examine?

MR. METZGER: Erick Metzger

with National All-Jersey.

CROSS-EXAMINATION

BY MR. METZGER:

Q. Questions on behalf of Mr. Vetne, who, number one, appreciates the work that you put into assimilating this information. Number two, expresses his ingress for having gotten hung up in Chicago, flights canceled, etc.

He did call me with some questions that he wanted asked in regard to the data assembled by the Market Administrator's office. Most of them have to relate to Exhibit 14, so I'm going to start with Exhibit 14 and then perhaps work back to a couple of the others for just a couple of follow-up questions.
On Exhibit 14, pages 3, 4 and 5 of 53. The category of less than 5 million is, of course, indicated as restricted, R-1. The totals that would have appeared in that category, are they included in the category of being equally above that?

A. No, they are not.

Q. So they are not included anywhere. Okay, very well.

On page 5 and 6 of 53, the column that is titled producer patrons, does that include independents and coop members not on 9(c) reports?

A. The question again was what?

Q. Producer patrons, that column, included in that column are independent shippers and coop members not on 9(c) reports?

A. That's correct.

Q. That is correct, thank you.

On page 10 of 53, under States W and NW of the marketing area, the R-2, is that data included in any other line or column?

A. No, it is not.

Q. And then on page 48 of 53, the Group 1 includes the top three; is that correct?
A. That's correct.

Q. And Group 2 includes the second three, which would be 4, 5 and 6?
A. That's right.

Q. And Group 3 would be 7, 8 and 9?
A. And possibly 10.

Q. And possibly 10. Very good.
A. Depending on the month.

Q. Okay. That was the question, whether anything that would have been in Group 4 was moved up to Group 3 if applicable?
A. If applicable, right. But we did not have enough to populate the Group 4.

Q. Okay, thank you.

Now, on Exhibit 12. This actually pertains to several of the pages that had distributing plant information in regards to distributing plants in areas 1, 2, 3 and 4.

The question is: Are there any pool distributing plants that are not in areas 1, 2, 3 or 4?
A. No, there are not. They're all included one way or another.

Q. And finally, this gets a little tricky going back and forth between Exhibit 10
and Exhibit 12. Again, referring to these four marketing areas. It has to do with variations in the amount of milk received at different distributing plants in these different regions and different months.

The general question is: Are there self-explanatory reasons why some of these volumes change, such as plants coming on-line, plants going off-line, plant being destroyed, etc.? For example, if we look at Exhibit 10, page 33, area 1, we have 96 million pounds of milk at distributing plants in January of '04. Page 37 of the same exhibit we have 102 million pounds in August of '04, and cross-referencing to Exhibit 12 on page 13, May of '04 we had 91 million pounds.

So in other words, in January we go from 96 million, in May we go down to 91 million, and then in August of '04 we go back up to 102 million pounds at distributing plants. Just the normal ebb and flow of...

A. Yes, it would be the normal ebb and flow. Things you've got to consider on here, too, is the number of days that milk is received. A lot of coops have instituted
uniform receipts credit, but even at that, there is still some variations between plants as to when they will and will not receive milk. And I would attribute most of that to just basically calendar composition.

Q. Okay.

A. And also time of year too, because when you're dealing with the summer months, milk production is obviously down, whereas during the fall or winter months, well even in the spring of the year, milk production would be up. So between the two of them, and also maybe some of the handlers elected not to receive all the milk and had to find a home elsewhere.

Q. Okay. In marketing area 2, if we look at Exhibit 12 on pages 5, 6 and 7, which are the months of November '01, '02 -- I'm sorry, 2000, '01 and '02, we see producer milk received varying from 188 to 194 million pounds; on page 13 of the same exhibit we see receipts at 146 million pounds for May of '04. Again, just --

A. That has primarily to do with one of the entities being pooled on another order
that was alluded to earlier.

Q. In area 3, on Exhibit 10, page 35, at the top of the page we see 130 million pounds in January of '04, 121 million pounds in July of '04. Again, just normal ebb and flow from winter to summer?

A. I think that has a lot to do with it, yes.

Q. In marketing area 4, Exhibit 12 on page 8, we have 79 million pounds in November of '03; on page 13 we have 71 million pounds in May of '04; and then Exhibit 10, page 36, we're back up to 78 million pounds in -- I'm sorry, page 38 on Exhibit 10, we're back up to 78 million pounds in August of '04. So we've seen a decline of 8 million pounds and another increase of 7 million pounds.

A. There was no change as far as the number of handlers, as I recall. No, same number of handlers involved. Just has to do, I would guess primarily, with milk requirements of those particular distributing pool plants at that time.

MR. METZGER: Okay, thank you very much. No further questions.
JUDGE HILLSON: Anyone else have questions? Mr. English, you can go again.

RECROSS-EXAMINATION

BY MR. ENGLISH:

Q. Prices are out for November, pretty much?

A. Yes.

Q. Do you know yet whether there's going to be depooling for November?

A. There might be some, but very little. Most of it will occur in December, I would guess, although I guess the cheese market dropped $0.20 today, so I don't know.

Q. But if the economics are there, you would expect to see the depooling again?

A. Yes.

Q. When milk is depooled, do you collect the market assessment on that, though, for that month?

A. No, we do not.

Q. So you effectively receive less money for the Market Administrator to be able to have the function or to have the reserve; correct?
A. Right. The administrative assessment is based on the total pounds of producer milk pooled.

Q. For that month does the Market Administrator office put anybody on unpaid leave in order to save money?

A. It's never amounted to that, but there is that possibility.

Q. Has the Market Administrator ever laid off employees for months of depooling then brought employees back in future months?

A. Not on the Central order. I can't speak for the others.

Q. Bottom line is, the cost of the Market Administrator continue regardless of whether the milk is pooled or depooled?

A. That is correct.

Q. I want to try one more time at the issue that you and Mr. Beshore had some discussion about. I want to see what it really takes to pool, remain pooled and depool. Let me see if I can give you an example.

Say a 9(c) handler has a producer and for whatever reason, economics, they decide to
depool most of the milk. If they nonetheless
list the producer and one day's production,
but effectively depool by not listing the rest
of production, the production that wasn't
listed is not producer milk; correct?
A. That's right.
Q. For that month?
A. For that month.
Q. But the producer is still a producer;
correct?
A. Because of the one day, right.
Q. Because they kept one day on?
A. Right.
Q. And so you can take off all but one
day, which is basically 3 or 4 percent of the
milk, basically 95 percent of the milk;
correct?
A. That's correct.
Q. And in the next month you can bring
that producer back entirely and not even
deliver the milk to a pool distributing plant;
correct?
A. That's correct.
Q. So long as it remains reported on a
9(c)?
A. That's right.

MR. ENGLISH: Thank you.

JUDGE HILLSON: No other questions? Mr. Beshore.

RE CROSS-EXAMINATION

BY MR. BESHORE:

Q. Marvin Beshore.

One other question, Mr. Stukenberg.

On Exhibit 10, page 13 of 42, I want to look at the November of 2003. In that month -- basically, first of all, this page shows your recalculation of the Central Federal order PPD, or producer price differential, assuming -- with or without milk from assumed milk volumes from Idaho; correct?

A. That's correct.

Q. But the PPD would have been negative if 100 million pounds of milk from Idaho were included on the pool; correct?

A. That's correct, at the $1.60 location.
Q. And that assumes the same no changes from -- in class prices from what was in place in November of 2003?

A. That would be right.

Q. So I guess my question is: Does this demonstrate that you can have negative producer price differentials even without price inversions?

A. Yes, you can.

MR. BESHORE: Thank you.

JUDGE HILLSON: Any objection to Exhibits 9 through 14 being admitted into evidence? Okay, Exhibits 9 through 14 are received in evidence.

Do you have any redirect, Mr. Stevens, before we let this witness go?

MR. STEVENS: (Shakes head.)

JUDGE HILLSON: Okay, you may step down.

Mr. Stevens, you may call your next witness.

MR. STEVENS: John Mykrantz.

JOHN L. MYKRANTZ, a Witness, being first duly sworn, testified under oath as follows:
JUDGE HILLSON: Please state and spell your name.


JUDGE HILLSON: Your witness, Mr. Stevens.

DIRECT EXAMINATION

BY MR. STEVENS:

Q. Mr. Mykrantz, could you tell us, where do you work?

A. I work for USDA AMS Dairy Programs as a marketing specialist for the Pacific Northwest in the Arizona market and Federal milk marketing orders in Bothell, Washington.

Q. And what is your position?

A. I'm a marketing specialist.

Q. And how long have you been in that position?

A. Since 1994.

Q. And what, basically, are your duties?

A. I oversee the pooling of payroll operations and also the economic analysis.

Q. Have you testified in Federal milk order hearings before?
A. I have.

Q. Have you been asked by any parties to prepare data for this hearing?

A. Yes.

Q. Would you care to explain how that came about for the record?


Q. And pursuant to that request, you then received a request from Dr. Nicholson's office?

A. Yes.

Q. And pursuant to that request, you prepared certain information?

A. Correct.

Q. Did you bring it with you today?

A. I did.

MR. STEVENS: Your Honor, I would like to mark for identification two documents. The first one is a two-page document, it has on the first page a title of Volume of Eligible Milk Delivered By Producers By State of Origin, Western Marketing Area,
Federal Order No. 135, 2000 through 2003. Two
page document.

JUDGE HILLSON: We'll mark that document Exhibit 15.

(Exhibit 15 was marked for identification.)

MR. STEVENS: And I would like to mark for identification as Exhibit 16 a
two-page document which is titled Number of Producers and Milk Production By County,

JUDGE HILLSON: You say two page? Mine is three.

MR. STEVENS: I'm sorry, three pages.

JUDGE HILLSON: The three-page document I'll mark as Exhibit No. 16.

(Exhibit 16 was marked for identification.)

Q. (By Mr. Stevens) Do you have copies of these?

A. I do.

Q. I believe you have brought copies and put them in the back of the room for people to
take?

A. I guess there were copies at the beginning of the hearing. There are no more. We can make more.

MR. STEVENS: If people need copies, I guess we can get some more copies, but you can ask Mr. Mykrantz and myself and see if we can get those for you.

Q. (By Mr. Stevens) So these documents were prepared by you pursuant to your supervision?

A. Correct.

Q. And they're not prepared for or against any proposal, are they?

A. No, they are not.

Q. For the use of the parties in the hearing to use as they want?

A. Correct.

Q. All right. Why don't you start with the first document and tell us basically what it is.

A. The first table entitled Volume of
Eligible Milk Delivered By Producers By State of Origin for the Western Marketing Area, Federal Order No. 135, 2000 through 2003, is a monthly listing by state of the origin of producer milk that was pooled on Federal Order 135.

Q. All right. So it's a monthly -- it has a monthly representation of the milk pooled?

A. Correct.

Q. By state?

A. Yes.

Q. By month?

A. Yes.

Q. For a total -- the years 2000, 2001, 2002 and 2003?

A. Correct.

Q. And it's subject to the footnotes on page 2 of 2?

A. Yes. There are footnotes at the bottom of this table that indicate restricted data during the time period and how the information was organized for publication.

Q. Why don't you tell us about the document that has been marked for
identification in Exhibit 16?

A. The second table, Number of Producers and Milk Production By County, is for the Western Order, No. 135, and applies to the same period, 2000 through 2003, but only for December of those years. And it is broken out by state and county but only on the basis of the county when that was possible.

Q. So again, this information would be for the years 2000 through 2003?

A. Correct.

Q. And it's organized by state and county?

A. Correct. And like the first table, there are footnotes at the bottom of the table that indicate restricted data during the time period and how that information was organized for publication.

Q. Okay. I see 11 footnotes there, is that right, page 3?

A. Yes, 11 footnotes.

MR. STEVENS: I have no further direct questions on this, your Honor. We want to offer this as an exhibit. We certainly subject the witness, offer the witness for
cross-examination.

JUDGE HILLSON: Any cross-examination of this witness?

Mr. English, come on up.

MR. ENGLISH: This is Charles English for Dean Foods Company.

CROSS-EXAMINATION

BY MR. ENGLISH:

Q. On Exhibit 15 you have a column, the last column for depool.

A. Correct.

Q. Is this the same term that we've been using today with the Order 32 Market Administrator's office?

A. I believe so.

Q. And you have a number, for instance, for October of 2001 of depool of 188,251,468.

A. Correct.

Q. Would that apply for all the states across to the left of that number that have -- that otherwise have numbers in other months?

A. It applies to certain states.

Q. Do you know which states it applies to and can you tell us without reviewing restricted data?
A. I couldn't tell you which states they are right off the top of my head.

Q. When you did this calculation similar to Order 32, did you do it based upon your books and records and your best estimates for what those producers had pooled in past months?

A. Yes, if not actual records received from handlers.

Q. Nonetheless, you do believe it to be as accurate and reasonable reflection as you can come up with from your office?

A. Yes.

Q. Now, do you agree with the discussion earlier about what the economic incentives or disincentives may be to pool milk?

A. I believe so.

Q. I note that in the months of -- in 2003, latter part of 2003, for instance August, September, October and November, there was milk that was over 150 million for each of those months that was depooled, according to your best estimates; correct?

A. Correct.

Q. But there was also milk that was
pooled from the state of Washington for those
months; correct?

A. Correct.

Q. Is the economic incentive in any
given month for different classes different as
to whether you pool or not?

A. I guess price relations -- price
relationships change from month to month.

Q. For instance, hypothetically
speaking, the price relationship could have
been during this period such that it was an
economic -- a good economic decision to not
pool milk that was going into cheese, but you
would might want to pool milk that was going
into nonfat, dry milk and powder?

A. Correct.

MR. ENGLISH: That's all I
have. Thank you.

JUDGE HILLSON: Any other
cross-examination? Any redirect?

Any objections to Exhibits 15 and 16
being admitted into evidence?

I'm receiving Exhibits 15 and 16 into
evidence. And you may step down,
Mr. Mykrantz.
You have one more witness?

MR. STEVENS: We do, your Honor.

JUDGE HILLSON: Should we take a 5 minute break or --

MR. BESHORE: Let's take a witness.

MR. STEVENS: This is Mr. Huber.

PAUL HUBER, a Witness, being first duly sworn, testified under oath as follows:

JUDGE HILLSON: Will you please state and spell your name for the record.

THE WITNESS: Paul Huber, H-U-B-E-R.

JUDGE HILLSON: He's your witness.

DIRECT EXAMINATION

BY MR. STEVENS:

Q. Mr. Huber, by whom are you employed?

A. The Market Administrator's office in Cleveland, Ohio, the Mideast market.

Q. What is your position?

A. Assistant Market Administrator.
Q. How long have you been in that position?
A. I've worked there 30 years. I've been in that position for four years.
Q. Four years as the assistant?
A. Yes.
Q. And briefly, what are your duties?
A. I help administer our three offices in Cleveland, Novi, Michigan, and Indianapolis.
Q. Now, have you appeared in Federal order hearings before?
A. I have.
Q. Have you presented evidence?
A. Yes, I have.
Q. Were you asked to prepare any evidence or any data, documents to introduce in this hearing?
A. Yes, we were.
Q. And could you describe briefly for the record how that came about?
A. I believe the Market Administrator received an e-mail or mail from Evan Kinser.
Q. Market Administrator you're referring to there is?
A. David Walker, about a week ago
requesting two months' comparison in 2003 and
2004 of some state data. He then, after
getting that data, he then asked for the same
information for two other months.

Q. Did you prepare information pursuant
to that request?
A. Yes, we did.

Q. Did you bring it with you today?
A. Yes, sir.

Q. There were copies of this available
in the back, I don't know if they're still
there.
A. I don't know if they're still there.

MR. STEVENS: And the same
offer, I guess, exists: If there are people
who really need them, we will see if we can
get more copies made, if they like, let us
know.

Your Honor, I would like marked for
identification, I guess we're talking about
17?

JUDGE HILLSON: 17, yes.

(Exhibit 17 was marked for
identification.)
MR. STEVENS: Exhibit 17, a four-page document, it has four tables, and the title on this document is Mideast Marketing Area-Federal Order 33, Pounds of Milk Pooled By State, February 2003 and 2004.

JUDGE HILLSON: I have marked it as Exhibit No. 17.

Q. (By Mr. Stevens) Do you have a copy of this?
A. Yes, I do.
Q. So the information in this was prepared by you or pursuant to your supervision?
A. Yes, sir.
Q. Pursuant to a request that you received from whom?
A. Dean Foods.
Q. And it was prepared from official records of the Market Administrator's office?
A. Yes, it was.
Q. And it's not being presented here today in favor or in opposition to any proposal, is it?
A. No, sir.
Q. For the use of the parties at the
hearing as they choose to use it?

   A. Yes.

Q. Could you briefly describe for us what is contained in the exhibit?

   A. It's four pages, they're all identical other than the months they represent. They represent a comparison between 2003 and 2004 of state production. The months that were compared were February, 2003 and 4, and then June, July and August of 2003 and 2004.

   It lists the primary states from which producers supplied the market. The only difference being that at the end we have "Other" for some of the smaller states that had smaller amounts. And comparing the 2004 to 2003 total production for the months that were asked for, the difference between the two years and a percentage change.

Q. All right. Maybe take an example of each for a state, just describe what it does with the numbers filled in.

   A. Sure. The first page would be February, across -- the first column would be February 2004 pounds and then the states
below, Michigan, Ohio, Wisconsin, Indiana, Pennsylvania, in decreasing volumes. The next column would be February 2003 for the same states and volumes, and then the difference in pounds between the two years and the percentage changes.

The last row varies under "Other."

Depending on the month that was chosen, you would have some miscellaneous states, and the miscellaneous states that are included under "Other" are footnoted.

Q. So the data that's submitted is subject to the footnotes on each page?

A. That's correct.

Q. And it's similar data for these areas, states and "Other" for comparing certain months in the year 2004 and 2003?

A. Yes, for the four months that were requested.

Q. Difference in pounds, percentage, that type of information is what's being described here?

A. Yes, sir.

MR. STEVENS: That's all I have. I offer the witness for
cross-examination.

I certainly ask these documents to be entered into evidence.

JUDGE HILLSON: Do you have cross-examination? Mr. English.

MR. ENGLISH: Charles English for Dean Foods.

CROSS-EXAMINATION

BY MR. ENGLISH:

Q. Mr. Huber, thank you for being here today.

I note that these are in millions of pounds; correct?

A. That's correct.

Q. I want to draw your attention for a moment to the June data. And I know you didn't actually do the chart for the May data, but I suspect you know some of the information for the May data. In June 2003 and June 2004, I note you have Vermont listed. Prior to June 2004, to your knowledge have you ever had milk from Vermont pooled on the Mideast order?

A. To my knowledge we have never had Vermont milk on Order 33.

Q. Not exactly in the marketing area?
A. No. No, sir.

Q. The market extends into western Pennsylvania, but no farther north and east?

A. That's correct, just east of Pittsburgh.

Q. Nonetheless for June 2004, you have 10,334,000 pounds of milk pooled on the Mideast order; correct?

A. Yes, it is.

Q. Vermont disappears for July, it's not there -- a separate listing is not there for "Other"; correct?

A. We had no data for Vermont in July.

Q. So you had this little one month phenomenon of 10 million pounds being pooled in your order; correct?

A. That's correct.

Q. Had you also -- looking at June 2004, you have a significant increase of 57 million pounds for New York from June 2003 to June 2004. To your knowledge, have you ever had as much as 150 million pounds of New York pooled on the order, Mideast order in the past?

A. I couldn't say with certainty, but I would doubt it.
Q. And I note that it drops back again in July; is that correct?

A. Yes.

Q. I'm sure we had this data when we were at the other hearing. I notice that New Jersey is part of the footnote for June 2004/June 2003. It's part of "other," correct, so we don't know what the volume was?

A. Yes, it would be very small.

Q. But nonetheless, you had New Jersey milk in the past pooled on the Mideast order?

A. We would have had at least one producer from New Jersey that was pooled in our order, that's correct.

Q. To your knowledge, had you ever had that before?

A. I don't believe so.

Q. And by July it's gone; right? It's not part of the footnote.

A. If it's not in the footnote, that would be correct.

Q. Would it be reasonable to conclude that this milk ended up being pooled somewhere else in future months?

A. Which milk? The Vermont milk?
Q. The Vermont milk, yes.

A. That state is located in Order 1.

Q. Whether it was pooled there or not, I have no

A. knowledge. I can assume it would be.

Q. You have no reasonable to believe

A. it's not being pooled in Order 1?

Q. And the economic incentives -- let's

A. I do not.

Q. backtrack for a moment. I haven't asked about

A. you agree with the definition of depooling

Q. That's been used by the prior Market

A. Administrator witnesses?

Q. That it's an elective choice by

A. handlers and cooperatives whether they choose

Q. to pool milk in a month;

A. Based on economic incentives;

Q. correct?

A. Correct.

Q. And it's not an alternative that's

A. available to pool distributing plants;

Q. correct?

A. That's correct.

Q. Do you know whether the economic

A. incentive in -- was available in May to
 depool? We heard that from other witnesses.

Would you agree the economic incentive was
there for people to elect not to pool milk in
May of this year?

  A.  I don't have the May data here.

  Q.  I understand you don't have the May
data, but I'm asking whether or not, to your
knowledge, based upon your experience with the
market this year and what you've heard today,
that May was a month in which people had the
economic incentive?

  A.  There was milk depooled in May,
correct.

  Q.  Yet the incentive was to pool milk in
June; correct?  Certainly the economic
incentive turned around?

  A.  In Order 33?

  Q.  Yes.

MR. ENGLISH:  Thank you.

JUDGE HILLSON:  Any other
cross-examination of this witness?

MR. STEVENS:  I offer Exhibit
17.

JUDGE HILLSON:  Any objection
to Exhibit 17 being admitted into evidence?
Hearing none, Exhibit 17 is received in evidence. And you may step down, Mr. Huber.

THE WITNESS: Thank you.

JUDGE HILLSON: That's the last witness for the government. So the question is, it's 8 minutes before 5:00, do we want to start -- do we want to hear any more witnesses or is this a logical time to take a break?

MR. BESHORE: I think it's a logical time to break. Mr. Hollon would be our first proponent's witness for Proposals 1, 2 and he's also going to talk about 3. His testimony is very lengthy, his exhibits are lengthy.

JUDGE HILLSON: One option is taking his direct today and his cross tomorrow. I mean, how do you feel, Mr. Stevens? Do you just want to do the whole thing tomorrow morning?

MR. STEVENS: I think that's fine. I would suggest maybe in terms of planning to maybe go off the record and maybe plan for what the witnesses might appear, we have some producers, producer witnesses, I
understand, and we want to accommodate
everyone. I know Mr. Boshore will feel the
same way about that.

JUDGE HILLSON: I was going to
do that tomorrow morning, but since we can
finish tonight, we can do that tonight. So we
can go off the record.

(Off the record.)

JUDGE HILLSON: Back on the
record now. We just had a discussion, we're
going to call it a day for today. We're going
to reconvene tomorrow morning at 8:30,
starting off with Mr. Hollon's testimony. So
we're adjourned today.

(Hearing adjourned at 4:57 p.m.
to commence at 8:30 a.m. on December 7, 2004.)
CERTIFICATE

I, Glenda Moeller, a Certified Shorthand Reporter in and for the State of Missouri, do hereby certify that I appeared at the time and place first hereinbefore set forth, that I took down in shorthand the entire proceedings had at said time and place, and that the foregoing constitutes a true, correct, and complete transcript of my said shorthand notes.

WITNESS my hand and seal this 11th day of December, 2004.

Glenda Moeller, CCR No. 962, RMR, CRR