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MIDEAST FEDERAL MILK ORDER NO. 33

PUBLIC HEARING

DOCKET NO. AO-166-A72; DA-05-01

VOLUME I

- - -

BE IT REMEMBERED, that upon the hearing of the above-entitled matter, held at the Shisler Conference Center, Ohio Agricultural Research and Development Center, Wooster, Ohio, before Peter M. Davenport, US Administrative Law Judge, and commencing on Monday, the 7th day of March, 2005, at 8:30 o'clock a.m., at which time the following proceedings were had.

- - -

1 APPEARANCES:

2

3 On Behalf of the United States Department of  
4 Agriculture:

5 US DEPARTMENT OF AGRICULTURE  
6 OFFICE OF THE GENERAL COUNSEL

7 BY: Garrett B. Stevens  
8 Deputy Assistant General Counsel  
9 Brian Hill  
10 Deputy Assistant General Counsel  
11 Marketing Division  
12 Room 2343, South Building  
13 Washington, DC 20250

14 and

15 US DEPARTMENT OF AGRICULTURE  
16 AGRICULTURAL MARKETING SERVICE  
17 DAIRY PROGRAMS

18 BY: Gino Tosi, Senior Marketing  
19 Specialist  
20 Erin C. Taylor, Marketing Specialist  
21 Bill Richmond, Marketing Specialist  
22 1400 Independence Avenue Southwest  
23 STOP 0231  
24 Room 2977 South Building  
25 Washington, DC 20250

1 APPEARANCES (Continued):

2 On Behalf of Dairy Farmers of America,  
3 Dairylea Cooperative, National Farmers  
4 Organization and Michigan Milk Producers  
5 Association:

6 LAW OFFICES

7 BY: Marvin Beshore, Attorney at Law  
8 130 State Street  
9 Harrisburg, Pennsylvania 17108

10 and

11 MMPA

12 BY: David Vanderhaagen  
13 41310 Bridge Street  
14 PO Box 8002  
15 Novi, Michigan 48376-8002

16 On Behalf of Dean Foods Company:

17 THELEN REID & PRIEST, LLP

18 BY: Charles M. English, Jr.  
19 Attorney at Law  
20 701 Pennsylvania Avenue Northwest  
21 Suite 800  
22 Washington, DC 20004-2608

23

24

25

1 APPEARANCES (Continued):

2 On Behalf of White Eagle Marketing

3 Federation, et al.:

4 John H. Vetne, Attorney at Law

5 103 State Street, #6

6 Newburyport, Massachusetts 01950

7 On Behalf of Continental Dairy Products:

8 YALE LAW OFFICE, LP

9 BY: Ryan K. Miltner, Attorney at Law

10 527 North Westminster Street

11 Waynesfield, Ohio 45896

12 On Behalf of Sarah Farms:

13 HERBERT SCHENK, PC

14 BY: Alfred W. Ricciardi, Attorney at Law

15 1440 East Missouri Avenue, Suite 125

16 Phoenix, Arizona 85014

17 On Behalf of Land O'Lakes:

18 Dennis Schad

19 Director of Marketing and Regulatory

20 Affairs, Land O'Lakes

21 405 Park Drive

22 Carlisle, Pennsylvania 17013

23

24 ALSO PRESENT: Tim Demland, Executive

25 Director of Ohio Dairy Producers; Carl Rasch,

1 Director, Milk Sales, Michigan Milk Producers  
2 Association; Erick Metzger, General Manager,  
3 National All-Jersey, Inc.; Gary Lee, Prairie  
4 Farms Dairy, Inc.; Joe Weis, Foremost Farms  
5 Cooperative; Charles Lausin, Producer in Geauga  
6 County, Trustee of Ohio Farm Bureau; Paul  
7 Rohrer, Wayne County farmer; Eddie Steiner,  
8 Smith Dairy Products Company and Sharon Uther,  
9 Assistant to Market Administrator for Mideast  
10 Marketing Area

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1                   JUDGE DAVENPORT: Ladies and  
2 gentlemen, if you would, please take your seats  
3 and let's get started. There's still some  
4 people picking up exhibits, but let's start the  
5 hearing.

6                   This is a hearing on proposed  
7 amendments to consider proposals that would  
8 amended certain provisions of the Mideast  
9 Federal Milk Marketing Order. The docket number  
10 is AO-166-A72; DA-05-01.

11                   Proposals were published in the  
12 Federal Register on February 17th in Volume 70,  
13 Number 32. There also is an amendment to that  
14 whereby the Proposal Number 10 was withdrawn, so  
15 as a result, in other words, we do not have the  
16 hearing on Proposal 10.

17                   The purpose of the hearing is to  
18 receive information relating to those proposals.  
19 The information you provide will be made into a  
20 written record and be used by the Secretary of  
21 Agriculture to make a decision on the proposals.  
22 The decision, of course, is based upon the  
23 record made at this hearing containing  
24 testimony, statements and the exhibits.

25                   My name is Peter Davenport. I'm the

1 Administrative Law Judge with the United States  
2 Department of Agriculture. My function here  
3 today is to prepare the record on the proposals  
4 that the Secretary and his representatives will  
5 consider.

6 As ground rules, any interested  
7 person may testify. Any individual may submit a  
8 written statement instead of testifying. If  
9 you're going to do that, please submit five  
10 copies of any statements or exhibits; one comes  
11 to me and the four exhibits come to the court  
12 reporter.

13 The reporter is here to record  
14 everything that is said at the hearing and  
15 prepare a written transcript of the testimony  
16 that will become part of the record that the  
17 Secretary of Agriculture considers. The record  
18 will also consider any written statements and  
19 exhibits that are submitted. The record is  
20 maintained in the Office of the Hearing Clerk,  
21 United States Department of Agriculture in  
22 Washington, D.C.

23 In this case, the proceedings are  
24 recorded and a transcript will be prepared and  
25 will be posted on the website. If you do not

1 have the means to withdraw it from the website,  
2 of course, you may contact the court reporter  
3 and make arrangements to get a copy of the  
4 record; however, the record will be available  
5 for public inspection in the Hearing Clerk's  
6 office in Washington.

7           If you wish to ask a witness a  
8 question, please raise your hand. I'll try to  
9 give everyone an opportunity to testify or ask  
10 questions or to submit statements and exhibits.  
11 Your testimony is acceptable as long as it is  
12 not immaterial, irreverent -- excuse me,  
13 irrelevant or repetitious. Representatives of  
14 the Department of Agriculture are available to  
15 give any member of the industry or the public  
16 assistance in making a presentation for the  
17 record.

18           The proposals which have -- there are  
19 proposals which have been submitted by members  
20 of the industry. We will hear first from the  
21 statistical people, and then we will hear from  
22 those who wish to testify in support of a  
23 particular proposal. Once they have completed  
24 their testimony, then we will hear from  
25 opponents of the proposal or those who wish to

1 modify it.

2                   When each side has completed their  
3 testimony on a proposal, we'll try to move on to  
4 the next one. However, I understand that there  
5 are certain producers here today, in other  
6 words, there are individuals who have particular  
7 time constraints. If you'll try to make that  
8 known to me, we'll try to accommodate anyone who  
9 has specific scheduling problems and we'll try  
10 to take those; however, we do need to take the  
11 statistical people first.

12                   Before asking for the names of  
13 witnesses, I'm going to receive into the record  
14 those exhibits concerning the notification of  
15 the hearing. Exhibit 1 will be the notice of  
16 the hearing published in the Federal Register.  
17 And I guess we will add to that Exhibit 1A,  
18 which is the withdrawal of the other proposal.

19                   MR. STEVENS:           Your Honor, if I  
20 may, my name is Garrett Stevens. I'm with the  
21 Department of Agriculture, General Counsel's  
22 office and I -- we gave a set of these exhibits  
23 to you and four sets to the reporter. And if I  
24 might, there's a notice of hearing and a press  
25 release for each notice. I have a stack there

1 that I -- hopefully I have the right ones for  
2 you. That would be 1 and 1A when we go through.

3 JUDGE DAVENPORT: Okay.

4 MR. STEVENS: Okay. As Your  
5 Honor said, the first one is the original notice  
6 of hearing that you've marked as 1. And then if  
7 we could, if you would like to use the 1A --  
8 there's a press release that was issued  
9 notifying the public of the issuance of the  
10 notice of hearing, and if that could be 1A we  
11 would -- then there was a subsequent press --  
12 subsequent notice -- an amendment to the notice  
13 of hearing actually that -- amendment to the  
14 Public Hearing on Proposed Rulemaking that was  
15 issued on March 3rd, and I would like that  
16 marked -- I guess by your numbering system, I  
17 guess, we could make that 2, if that's okay; and  
18 the press release for that -- for that document  
19 we would ask be 1B -- 2B.

20 JUDGE DAVENPORT: Or 2A.

21 MR. STEVENS: 2A. We'll get it  
22 right, 2A.

23 (Thereupon, Exhibits 1, 1A, 2, 2A of  
24 the Mideast Federal Milk Marketing  
25 Order hearing were marked for

1 purposes of identification.)

2 JUDGE DAVENPORT: All right.

3 MR. STEVENS: And then the  
4 certificates of the officials notified and I  
5 believe there are three of them, the first  
6 one -- if it's okay with Your Honor, there are  
7 three -- three of these, but they're not the  
8 same.

9 (Thereupon, a discussion was held off  
10 the record.)

11 JUDGE DAVENPORT: Well, two. One is  
12 a certificate of officials notified, and the  
13 first one was dated 17 of February 2005, the  
14 second one was dated March 3, 2005.

15 MR. STEVENS: Yeah. These are  
16 for the notices of the hearing, and then the  
17 third one is for -- okay. The third one is the  
18 Market Administrator notifying interested  
19 parties of the hearing. So we would like all of  
20 those marked.

21 JUDGE DAVENPORT: Okay. We have  
22 those as 3, 4 and 5.

23 MR. STEVENS: All right.

24 (Thereupon, Exhibits 3 through 5 of  
25 the Mideast Federal Milk Marketing

1           Order hearing were marked for  
2           purposes of identification.)

3           JUDGE DAVENPORT: Are there any  
4           objections by any persons present as to the  
5           Exhibits 1 through 5? They will all be received  
6           into evidence at this time then.

7           MR. STEVENS:        Thank you, Your  
8           Honor.

9           JUDGE DAVENPORT: Mr. Stevens, of  
10          course, has appeared as one of the  
11          representatives of the Department of  
12          Agriculture. Let me at this time, if I could,  
13          get the appearances for the other individuals  
14          that are representing the largest groups.

15          MR. STEVENS:        Your Honor, if I  
16          might, I have some other officials from the  
17          Department who we might want to have enter an  
18          appearance at this time, and then the parties  
19          can enter their appearances, if that's  
20          acceptable.

21          JUDGE DAVENPORT: Very well.

22          MR. TOSI:            Yes, Your Honor.  
23          Thank you. My name is Gino Tosi. G-i-n-o, last  
24          name Tosi, "T" as in Tom, o-s-i. I'm with the  
25          USDA in Washington, D.C.

1                   MR. HILL:            My name is Brian  
2 Hill, United States Department of Agriculture,  
3 Office of the General Counsel Marketing  
4 Division.

5                   MR. RICHMOND:        Good morning. My  
6 name is Bill Richmond, also with the USDA Dairy  
7 Programs in Washington, D.C.

8                   JUDGE DAVENPORT:       Ms. Taylor?

9                   MS. TAYLOR:            My name is Erin  
10 Taylor. I'm with USDA in Washington, D.C.

11                  MR. BESHORE:        My name is Marvin  
12 Beshore. That's spelled B-e-s-h-o-r-e.  
13 Attorney from Harrisburg, Pennsylvania. I'm  
14 here representing the Proponents of the  
15 Proposals 1, 2, 7 and 9, Dairy Farmers -- which  
16 is Dairy Farmers of America, the National  
17 Farmers Organization, Dairylea Cooperative and  
18 Michigan Milk Producers Association. With  
19 respect to Michigan Milk Producers Association,  
20 I'm not representing them with respect to their  
21 position on modifications to Proposal 2.

22                  JUDGE DAVENPORT:        Very well.

23                  MR. VANDERHAAGEN:      Your Honor, my name  
24 is David Vanderhaagen. That's  
25 V-a-n-d-e-r-h-a-a-g-e-n. I'm a lawyer from

1 Lansing, Michigan. I represent Michigan Milk  
2 Producers Association.

3 JUDGE DAVENPORT: Thank you, sir.

4 MR. ENGLISH: Good morning, Your  
5 Honor, my name is Charles English. I'm with the  
6 law firm of Thelen, Reid & Priest in Washington,  
7 D.C., and I'm here representing the Dean Foods  
8 Company.

9 When appropriate, Your Honor, I have  
10 a procedural point on Proposal Number 3 proposed  
11 by Dean Foods Company.

12 JUDGE DAVENPORT: Very well.

13 MR. VETNE: My name is John  
14 Vetne, V-e-t-n-e. I'm an attorney. My office  
15 is in Newburyport, Massachusetts. I enter my  
16 appearance on behalf of the White Eagle  
17 Marketing Federation, it's constituent members,  
18 Family Dairies, USA, National All Jersey,  
19 Superior Dairy, United Dairy, Brewster Cheese  
20 and Guggisberg Cheese.

21 JUDGE DAVENPORT: Thank you, sir.

22 MR. MILTNER: Thank you, Your  
23 Honor. My name is Ryan Miltner, M-i-l-t-n-e-r.  
24 I'm with Yale Law Office in Waynesfield, Ohio.  
25 I'm representing Continental Dairy Products, the

1 Proponents of Proposal Number 5.

2 MR. RICCIARDI: Good morning, Your  
3 Honor. My name is Al Ricciardi. It's  
4 R-i-c-c-i-a-r-d-i. I'm an attorney from  
5 Phoenix, Arizona and I'm here today on behalf of  
6 the Sarah Farms.

7 MR. LEE: My name is Gary  
8 Lee. I'm employed by Prairie Farms Dairy, Inc.  
9 We're here to offer testimony only on Proposals  
10 7 and 9.

11 MR. WEIS: Good morning, Your  
12 Honor. My name is Joe Weis, W-e-i-s. I'm here  
13 to offer modifications to Proposal Number 9 on  
14 behalf of Foremost Farms USA Cooperative.

15 MR. DEMLAND: Your Honor, my name  
16 is Tim Demland, D-e-m-l-a-n-d, and I'm here as  
17 Executive Director of the Ohio Dairy Producers  
18 and Proposals 4 and 6.

19 JUDGE DAVENPORT: Others? Do we have  
20 any producers that are going to testify?

21 MR. LAUSIN: My name is Charles  
22 Lausin, L-a-u-s-i-n. I'm a producer in Geauga  
23 County, also a Trustee on the Ohio Farm Bureau  
24 Board of Trustees.

25 MR. ROHRER: My name is Paul

1 Rohrer, R-o-h-r-e-r. I'm a farmer from Wayne  
2 County.

3 JUDGE DAVENPORT: Anyone else? Is  
4 there anyone that has a specific scheduling  
5 problem, in other words, may possibly need to be  
6 taken out of order? Very well.

7 MR. STEINER: Your Honor, I'm  
8 Eddie Steiner from Smith Dairy Products Company.

9 JUDGE DAVENPORT: I'm sorry. The  
10 first name again?

11 MR. STEINER: Eddie, E-d-d-i-e,  
12 Steiner, S-t-e-i-n-e-r.

13 JUDGE DAVENPORT: Yes, sir. Thank  
14 you. Very well. Mr. Stevens?

15 MR. BESHORE: Just a procedural  
16 inquiry, Your Honor. With respect to Your  
17 Honor's statement with regard to the rules of  
18 practice or evidence in the proceeding, if I  
19 heard you correctly, you indicated that there  
20 was the opportunity to submit written  
21 statements.

22 My understanding is that -- and the  
23 hearing notice indicates the hearing is  
24 conducted pursuant to the Sections 556 and 557  
25 of the Administrative Procedure Act and the

1 Agricultural Marketing Agreement Act, which  
2 provides for on-the-record rulemaking  
3 proceedings which require, I believe, that  
4 evidence be presented under oath and subject to  
5 cross-examination other than materials which may  
6 be subject to the rules of official notice.

7           And if there is some other rule of  
8 which I am not aware, I would like to have that  
9 clarified, but I do not believe that under 556  
10 and 557 written statements not under oath not  
11 subject to cross-examination would be  
12 admissible.

13           JUDGE DAVENPORT: Counsel?

14           MR. STEVENS: I agree, Your  
15 Honor. I think that's -- I think that's the  
16 understanding of everyone here, that the  
17 statements that go in, documentary and  
18 testimony, are subject to cross-examination.  
19 There are provisions for refiling and different  
20 things after the hearing, but certainly during  
21 the course of the hearing, the statements -- we  
22 have had in the past, I guess, some instances  
23 where statements have been entered in evidence,  
24 but the person reads the statement on the  
25 record. Sometimes in the interests of time, I

1 think, they have been admitted, but people have  
2 had an opportunity to read them and digest them  
3 and subject the Proponent or the person giving  
4 that statement to cross-examination.

5 JUDGE DAVENPORT: Very well. Your  
6 point is well taken. It appears that I have  
7 overstated what we were doing; however, let's  
8 see if that question actually is -- actually  
9 comes up. Mr. Stevens?

10 MR. STEVENS: Your Honor, I would  
11 like to call to the stand the first witness,  
12 Sharon Uther, and she has prepared certain  
13 documents that we're going to go into in a  
14 minute. I've given Your Honor a copy. There  
15 are copies available at the back of the room.  
16 There are copies of, I think, the notices and  
17 different documents prepared by the Market  
18 Administrator's office.

19 And before Ms. Uther testifies, I  
20 would like marked for identification certain  
21 exhibits, but I'd leave it if you would like to  
22 swear her in.

23 JUDGE DAVENPORT: Let's swear her in  
24 at this time.

25 MR. STEVENS: Sure.

1                   JUDGE DAVENPORT:  Would you raise  
2 your right hand?

3                   MS. Uther:               (Complies with the  
4 request.)

5                   (Thereupon, Ms. Uther was sworn by  
6 Judge Davenport.)

7                   JUDGE DAVENPORT:  Very well.  Please  
8 be seated.

9                   MR. STEVENS:           Okay.  Your Honor,  
10 we have certain documents that Ms. Uther will  
11 testify to in a minute and we would like to mark  
12 for identification.  The first document is  
13 entitled "Compilation of Statistical Data,  
14 2003-2004," prepared by the Market  
15 Administrator's office.  I believe we're at  
16 Number 6.

17                   JUDGE DAVENPORT:  Six for  
18 identification at this time.

19                   (Thereupon, Exhibit 6 of the Mideast  
20 Federal Milk Marketing Order hearing  
21 was marked for purposes of  
22 identification.)

23                   MR. STEVENS:           And we'll go into  
24 further identification of the document as I  
25 question the witness.  The next document is also

1 a Compilation of Statistical Data As Requested  
2 by Dairy Farmers of America, Inc., and Michigan  
3 Milk Producers Association, and we would like  
4 that marked -- it is a series of tables and  
5 data, maps and such, we would like that marked  
6 as Exhibit 7.

7 JUDGE DAVENPORT: So marked.  
8 (Thereupon, Exhibit 7 of the Mideast  
9 Federal Milk Marketing Order hearing  
10 was marked for purposes of  
11 identification.)

12 MR. STEVENS: Another Compilation  
13 of Statistical Data As Requested by Michigan  
14 Milk Producers Association, I believe it's just  
15 one page attached to a cover sheet, we would  
16 like that marked as Exhibit 8.

17 JUDGE DAVENPORT: For identification  
18 it is so marked.

19 MR. STEVENS: Yes, please.  
20 (Thereupon, Exhibit 8 of the Mideast  
21 Federal Milk Marketing Order hearing  
22 was marked for purposes of  
23 identification.)

24 MR. STEVENS: Compilation of  
25 Statistical Data As Requested by Dean Foods. It

1 looks to be --

2 JUDGE DAVENPORT: Exhibit 9 for  
3 identification.

4 (Thereupon, Exhibit 9 of the Mideast  
5 Federal Milk Marketing Order hearing  
6 was marked for purposes of  
7 identification.)

8 MR. STEVENS: -- three pages.

9 Thank you, Your Honor. A Compilation of  
10 Statistical Data As Requested by Continental  
11 Dairy Products, Inc., a series of tables and  
12 other documentary information, we would like  
13 marked as 10.

14 JUDGE DAVENPORT: Exhibit 10 for  
15 identification.

16 (Thereupon, Exhibit 10 of the Mideast  
17 Federal Milk Marketing Order hearing  
18 was marked for purposes of  
19 identification.)

20 MR. STEVENS: And the last one is  
21 a Compilation of Statistical Data As Requested  
22 by White Eagle Milk Marketing Federation, Inc.,  
23 Family Dairies, USA, et al.

24 JUDGE DAVENPORT: So marked as  
25 Exhibit 11.

1                   (Thereupon, Exhibit 11 of the Mideast  
2                   Federal Milk Marketing Order hearing  
3                   was marked for purposes of  
4                   identification.)

5                   MR. STEVENS:           Exhibit 11. Thank  
6 you.

7                                   SHARON UTHER  
8 of lawful age, a Witness herein, having been  
9 first duly sworn, as hereinafter certified,  
10 testified and said as follows:

11                                   DIRECT EXAMINATION

12 BY MR. STEVENS:

13 Q.    Good morning.

14 A.    Good morning.

15 Q.    Could you please state your name and spell  
16 your last name for the record?

17 A.    Sharon Uther, U-t-h-e-r.

18 Q.    Ms. Uther, what is your occupation?

19 A.    I'm assistant to the Market Administrator  
20 for the Mideast Marketing Area.

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

23 A.    I've been in that position for about eight  
24 years.

25 Q.    And could you briefly describe for the

1 record what your duties are?

2 A. My duties are I supervise the pool and  
3 statistics departments.

4 Q. Okay. And your educational background?

5 A. I have a Bachelor of Science degree in  
6 agriculture from the Ohio State University.

7 Q. Go Buckeyes, huh?

8 A. That's right.

9 Q. All right. And in preparation for the  
10 hearing, did you prepare certain documents and  
11 exhibits?

12 A. Yes, I did.

13 Q. And did you bring them with you today?

14 A. Yes.

15 Q. Now, certain of the documents you prepared,  
16 and I'm going to go through now the documents  
17 that we had the Judge mark for identification.  
18 You have copies of those?

19 A. Yes.

20 Q. All right. Let's go through them from --  
21 starting with Number 6, if you would.

22 A. Okay.

23 Q. Number 6 is a compilation of statistical  
24 material prepared by the Market Administrator's  
25 office?

1 A. Yes.

2 Q. The Mideast Market Administrator's office.

3 And you prepared this, or it was prepared

4 pursuant to your supervision?

5 A. Yes.

6 Q. And the material came from official records

7 of the Market Administrator's office?

8 A. Yes.

9 Q. The US Department of Agriculture; is that's  
10 correct?

11 A. Yes, it did, uh-huh.

12 Q. And so you have a table of contents in the  
13 exhibit, I'm looking at it, and from that  
14 table -- from that table of contents, it appears  
15 there are certain number of tables that you have  
16 prepared --

17 A. Yes.

18 Q. -- that follow after the table of contents  
19 page?

20 A. Yes.

21 Q. Going to the first page of the actual  
22 document, this would be a List of Pool Handlers  
23 Filing Reports of December of 2004?

24 A. Right. That's correct.

25 Q. So in a few words, what's contained in that

1 document, on that page?

2 A. This is a list of distributing plants,  
3 supply plants and cooperative associations that  
4 filed market reports for the month of December  
5 2004. It is broken down by the Class I  
6 Differential locations.

7 Q. All right. Going to what is identified as  
8 Table 2, what's contained in that material?

9 A. Table 2 is the National Agricultural  
10 Statistical Service dairy product price averages  
11 for the product prices that are used in the  
12 computations of the class prices for both the  
13 advanced prices and the monthly prices.

14 Q. All right. So take us through the exhibit.  
15 Just for an example, I see there's two -- well,  
16 there's obviously a number of columns in  
17 different sections and they set up certain  
18 information in there for a two-week average and  
19 a monthly average?

20 A. That's correct. For two years; for the  
21 years 2003 and 2004.

22 Q. Okay. So we --

23 A. The first column would be the cheese price,  
24 and then the butter price, nonfat dry milk  
25 price, dry whey price. The product prices that

1 are used for the advanced prices, the two-week,  
2 average and then the monthly average is used to  
3 compute the monthly prices.

4 Q. Okay. And then the information on that  
5 page is subject to the footnotes at the bottom  
6 of the page?

7 A. Yes. It states there that the first  
8 section, the two-week average, is "Used to  
9 compute the advanced prices announced on or  
10 before the 23rd," and then the second section,  
11 the monthly average, is "Used to compute Class  
12 and Component Prices announced on or before the  
13 5th of the following month."

14 Q. All right. Moving on to Table 3, the next  
15 page, that contains information for class  
16 prices?

17 A. That's correct.

18 Q. Is it for the same period of time basically  
19 as the --

20 A. Yes.

21 Q. And these tables that follow are the same  
22 nature, right?

23 A. Right.

24 Q. There's different information --

25 A. Uh-huh.

1 Q. -- but basically for the same time period?

2 A. Right.

3 Q. So subject to the footnotes at the bottom

4 of the page containing statistical pricing

5 information?

6 A. That is correct.

7 Q. All right. So reading across the class

8 prices, Skim, Class I Butterfat and 3.5 Percent

9 Price at the various classes?

10 A. Right.

11 Q. For the months and years described there?

12 A. Yes.

13 Q. On Table 4 you have Producer Prices and

14 Producer Production Summary?

15 A. Yes.

16 Q. For the same period of time?

17 A. That is correct.

18 Q. Table 4. Table 5, Producer Receipts - By

19 Classification?

20 A. Yes. This is utilization of producer milk

21 for the same time period, 2003-2004 and the

22 percentage of the total of each of those

23 classes.

24 Q. Pounds, percentage of totals, by class --

25 A. Yes.

- 1 Q. -- total pounds --
- 2 A. Yes.
- 3 Q. -- for the period of time described on the
- 4 document subject to the footnotes?
- 5 A. Right.
- 6 Q. Table 6 would be the Producer Butterfat
- 7 Receipts - By Classification?
- 8 A. Yes. It's the butterfat that applies to
- 9 the products found in Table 5 broken down by
- 10 class and the percentage of the total.
- 11 Q. And the total butterfat column?
- 12 A. Yes.
- 13 Q. For the months described subject to the
- 14 footnote?
- 15 A. Yes.
- 16 Q. Next, Table 7 is the Producer Skim
- 17 Receipts - By Classification?
- 18 A. Yes. In the same manner as the butterfat,
- 19 the class utilization showing pounds and the
- 20 percentage of the total.
- 21 Q. All right. Table 8 is Receipts At Pool
- 22 Plants in thousand pounds?
- 23 A. Yes.
- 24 Q. Producer Receipts, Nonpool Plants, and what
- 25 other information is contained on that?

- 1 A. Producer-handler, non-regulated receipts,  
2 powder and condensed, opening inventory and  
3 overages for the total receipts and pool plants.
- 4 Q. Subject to the footnotes?
- 5 A. Yes.
- 6 Q. Table 9 is a Class I Disposition at Pool  
7 Plants?
- 8 A. Yes. The route disposition, any other  
9 Class I utilization, bulk sales, shrinkage, and  
10 the inventory, stock feed and dumping occurred  
11 in one month in 2004 to make up the total Class  
12 I Disposition at Pool Plants.
- 13 Q. Okay. Subject to the footnotes?
- 14 A. Yes.
- 15 Q. Table 10 is the Class I Disposition At Pool  
16 Plants. Class II, I'm sorry. I misspoke.  
17 Class II.
- 18 A. Class II, yes. Showing cream, sour cream,  
19 dips and yogurt, cottage cheese, ice cream, used  
20 to produce numbers, along with skim equivalent  
21 and any shrinkage or transfers to other Orders  
22 in Class II.
- 23 Q. And the totals?
- 24 A. And the total, yes.
- 25 Q. Subject to the footnotes Table 10?

1 A. Yes.

2 Q. Table 11 is Class III Disposition At Pool  
3 Plants?

4 A. Yes. Showing the used to produce in Class  
5 III, stock feed and dump, transfers to other  
6 Orders, shrinkage and the total for the same  
7 time period.

8 Q. Okay. Subject to the footnotes?

9 A. Yes.

10 Q. Table 12 is a Class Iv Disposition at Pool  
11 Plants?

12 A. Yes. Showing Class IV utilization with all  
13 of the used to produce, stock feed and dumps,  
14 equivalent, transfers to other Orders,  
15 inventory, shrinkage and the total.

16 Q. Subject to the footnotes?

17 A. Yes.

18 Q. Table 13 is the Route Sales Within  
19 Marketing Area?

20 A. Yes. This shows in thousands of pounds  
21 sales within the marketing area from pool  
22 plants, partially regulated plants,  
23 producer-handler and exempt plants, other order  
24 route sales into the marketing area and total  
25 into the marketing area.

1 Q. All right. And Table 14 is Total Route  
2 Sales By Pool Distributing Plants?

3 A. Yes. That would include in area sales,  
4 sales into other Orders, sales into unregulated  
5 areas and the total amount sales of pool  
6 distributing plants.

7 Q. Okay. Moving on to Table 15, what's  
8 contained there?

9 A. Table 15 is the Weighted Averages of  
10 Components By Production Range. For the  
11 two-year period, it shows production ranges of 3  
12 through 30,000 pounds in 30,000-pound increments  
13 up to a million and above, the number of  
14 producers, pounds of milk and the percentage of  
15 the components and somatic cell in each of those  
16 increments, production ranges.

17 Q. Okay. And that's for the years 2003 to  
18 2004 as the document shows?

19 A. Yes.

20 Q. On Table 16, "Percent of Producer Milk By  
21 Somatic Cell Count Range"?

22 A. Yes. It shows the quarter average for the  
23 two years of the percent of milk that falls in  
24 the different somatic cell count ranges along  
25 with the yearly average.

1 Q. Table 17, what's contained there?

2 A. Table 17 is the Receipts of Producer Milk  
3 By State and County for the months of May and  
4 December 2004, and it lists by state, by county  
5 the producer count and the pounds of milk  
6 produced in those counties and pooled on the  
7 Mideast Market. Any restricted counties are  
8 contained in the miscellaneous for each state.

9 Q. Okay. And that document goes over to the  
10 next page, am I right?

11 A. Yes.

12 Q. I mean, Table 17 --

13 A. It is several pages.

14 Q. How many pages does it run? It runs, one,  
15 two, three -- four?

16 A. Four pages front and back. Four and a half  
17 front and back.

18 Q. Basically to the end of the document?

19 A. Yes.

20 Q. And it's all covering the same month -- the  
21 same months?

22 A. The same two months, yes, May and December  
23 for 2004.

24 Q. Okay. Now, as you testified, this document  
25 was prepared by you pursuant to your supervision

1 and comes from official records of the Market  
2 Administrator's office?

3 A. Yes, it does. It's information we release  
4 in our annual statistics.

5 Q. And it's not presented here in favor or  
6 against any of the proposals, is it?

7 A. No.

8 Q. For the use of the parties as they need to  
9 use it during the course of the hearing?

10 A. Yes.

11 Q. Were you asked by parties to participate in  
12 the hearing or other parties to prepare  
13 documents for the hearing?

14 A. Yes, we were.

15 Q. And I direct your attention to the exhibit  
16 marked Number 7. Is that one of those documents  
17 that you received a request to prepare?

18 A. Yes, it was. It was requested on behalf of  
19 Dairy Farmers of America and Michigan Milk  
20 Producers Association.

21 Q. And the letter under the cover page  
22 basically describes the request, does it not?

23 A. Yes.

24 Q. And the documents that follow are your  
25 responses to the request for the information?

1 A. Yes, they are.

2 Q. And there are a series of tables, and I  
3 guess you have numbered these tables with  
4 respect to the request number?

5 A. Yes, we have.

6 Q. So going to the first page of -- that I see  
7 it as Request Number 1(a), you prepared certain  
8 material in response to that?

9 A. Yes.

10 Q. Can you briefly describe what that is?

11 A. This is the producer milk by state for the  
12 years 2000 through 2004. We've listed by month  
13 the production in each of those years by state.  
14 And at the back of the table there is also a  
15 total section.

16 Q. Now, that table goes on for a number of  
17 pages?

18 A. Yes.

19 Q. And then you're testifying that at the end  
20 of the tables there is a summary?

21 A. Yes.

22 Q. Now, these pages aren't numbered, but  
23 they -- but the last page is -- has a separate  
24 set apart table, Mideast Tables. Is that what  
25 you're referring to?

1 A. Yes. There are some footnotes throughout.  
2 If there's milk from restricted states it's  
3 included with some of the other states.  
4 Q. Okay. Why don't you explain that a little  
5 bit. By "restricted" you mean what?  
6 A. That there are less than 3 producers  
7 contained in those counties -- in those states.  
8 Q. All right. And that affects how much  
9 information you can relay?  
10 A. Yes.  
11 Q. Now, the next part of the exhibit, I  
12 believe, is entitled "Mideast Pounds of Producer  
13 Milk State and County" with "December," at the  
14 top of the page?  
15 A. Yes.  
16 Q. Is that the next section of this exhibit?  
17 A. Uh-huh.  
18 Q. And this is Request Number 1(b)?  
19 A. Correct.  
20 Q. So just tell us briefly what that is?  
21 A. This is the Mideast pounds of producer milk  
22 broken down by state and county for the month of  
23 December only in the years 2000 through 2004.  
24 And it shows individual counties in the specific  
25 states.

1 Q. And that goes on for a number of pages?

2 A. Yes, it does.

3 Q. And the information there is subject to the  
4 footnotes on any of the pages there?

5 A. Yes.

6 Q. Now, the next section that I see is Request  
7 Number 2?

8 A. Yes.

9 Q. Estimated Impact of Distant Milk Pooled on  
10 Mideast Order. Can you briefly explain what  
11 that exhibit shows?

12 A. Yes. Per the request, they wanted the five  
13 states listed, Illinois, Iowa, Minnesota,  
14 Wisconsin and Vermont, the milk pooled from  
15 those states on our Order considering that  
16 distant milk and what the impact on the producer  
17 price differential was by having that milk  
18 pooled. So we've listed the pounds in the first  
19 five columns from those states, the total pounds  
20 in the next column and the last column is the  
21 impact on the producer price differential of  
22 those five states. So you can see starting in  
23 August 2003 it would have been a \$0.06 increase,  
24 \$0.03 increase, on down the column.

25 Q. And the negatives are represented by

1 numbers in parentheses?

2 A. Yes.

3 Q. Okay. I'm now looking at the next request,  
4 Number 3, a document entitled "Mideast Marketing  
5 Area Deliveries of Producer Receipts from"  
6 Iowa -- "from Illinois, Iowa, Minnesota and  
7 Wisconsin to Distributing Plants,  
8 August - November 2004."

9 A. Yes.

10 Q. And I guess that title is self-explanatory.  
11 That explains what's contained on that page?

12 A. Yes.

13 Q. Number 4, what's -- what did you prepare in  
14 response to Request Number 4?

15 A. This shows the monthly changes in the  
16 Mideast producer receipts from month to month,  
17 but I do have some corrections to note.

18 Q. All right. Could you do that, please?

19 A. Okay.

20 Q. And go slowly so everyone can keep up with  
21 you.

22 A. Okay.

23 Q. Thank you.

24 A. In the year 2003, the month of January  
25 should read, under the pounds column, 1,512,532

1 with a percent of 107.64.

2 Q. Okay.

3 A. March of that same year should be

4 1,521,275; percentage, 109.62.

5 Q. Uh-huh.

6 A. April of 2003, 1,484,752.

7 Q. Uh-huh.

8 A. A percent of 97.60. June, 1,438,425;

9 percent, 93.80. And the corrected total for

10 2003, 17,620,298. And one more correction. In

11 February 2004, 1,410,996; percent of 93.25. We

12 give a corrected total for 2004 of 18,356,920.

13 Q. All right. What information did you

14 prepare in response to Request Number 5?

15 A. Four. This is Request 4.

16 Q. This is four, yes, but I'm moving on now.

17 A. Oh, you're moving on.

18 Q. That's all right. Is there anything else

19 you would like to say about Request Number 4?

20 A. No.

21 Q. How about Number 5. What did you prepare

22 in response to that question?

23 A. Number 5 lists the pounds of milk

24 voluntarily depooled on the Mideast Order and

25 the estimated impact on the producer price

1 differential of that milk being depooled for the  
2 years 2003 and 2004.

3 Q. Okay. 6(a)?

4 A. 6(a) shows milk delivered -- producer milk  
5 delivered from farms located in the Mideast  
6 Marketing Area to distributing plants with the  
7 distribution by distance in 20-mile increments.

8 Q. Uh-huh.

9 A. Well, I guess I should say this corresponds  
10 to the four states that we excluded prior.  
11 Rather than being specifically in the marketing  
12 area, it ties back to Table 3, and we excluded  
13 those four states and considered everything else  
14 in the marketing area.

15 Q. Okay.

16 A. So when you look at those pounds, it shows  
17 the percentage of each zone increment and then  
18 accumulation of that percent.

19 Q. Okay. Request 6(b)?

20 A. 6(b) is the movements of the total Mideast  
21 producer milk delivered to distributing plants  
22 in the same 20-mile increments.

23 Q. Now, how does that differ from 6(a)?

24 A. 6(a) is just the milk excluding the four  
25 states that we consider distant milk. And so

1 it's more the milk within the marketing area  
2 moving to the distributing plants, where this is  
3 the total milk pooled delivered to distributing  
4 plants.

5 Q. All right. Request Number 7?

6 A. Request in Request Number 7, we were  
7 requested to break the milk down into five zones  
8 showing the movement to distributing plants, and  
9 we have the zones of Northern Ohio, Southern  
10 Ohio, Michigan, Indiana and Pennsylvania with  
11 the same distribution of movement up to 700  
12 miles and above in 20-mile increments.

13 Q. All right. I see at the bottom there's an  
14 average. Is there an average?

15 A. Yes. At the bottom is the average of the  
16 hauling distance, a weighted average for each  
17 region.

18 Q. All right. And what did you prepare in  
19 response to Request 8(a)?

20 A. Okay. 8(a) is a map of the region  
21 identified in Request 7 showing the Northern  
22 Ohio region with the distributing plants located  
23 in that region marked with stars. There's a  
24 legend down at the bottom right.

25 The total Class I sales by distributing

1 plants in the region are listed there, and the  
2 total pooled producer pounds is the producer --  
3 producer milk of the producers located in that  
4 region.

5 Q. Okay. Request 8(b)?

6 A. 8(b) is the same information for the  
7 Southern Ohio region.

8 Q. Okay. With the distributing plants marked  
9 and the other information displayed as in the  
10 previous document?

11 A. Yes. And then 8(c), (d) and (e).

12 Q. Yeah, why don't you just describe those.  
13 The same information?

14 A. The same information for the different  
15 regions.

16 Q. For the different regions?

17 A. Yes.

18 Q. As set forth in the document itself?

19 A. Yes.

20 Q. So that takes us through 8(e). And now  
21 moving on to Request Number 9(a), what did you  
22 prepare?

23 A. Okay. 9(a) is a map of the Mideast  
24 Marketing Area showing the marketing area  
25 outlined in red with shaded blue being the

1 milkshed of the marketing area. Distributing  
2 plants are identified with the black dots,  
3 partially regulated with a triangle,  
4 producer-handler and exempt plants are  
5 identified with stars and supply plants with the  
6 red squares.

7 Q. Now, that's for the month of May 2004?

8 A. That's correct.

9 Q. And you then prepared other -- another map  
10 for 9(b). That's for a different month,  
11 December --

12 A. Yes. It's the same information for the  
13 month of December 2004.

14 Q. All right. How about Request Number 10?

15 A. Request Number 10 is a map of the Mideast  
16 Marketing Area showing the various pricing  
17 differentials throughout the marketing area for  
18 the different zones located in the area.

19 Q. Okay. And the color key describes the  
20 prices --

21 A. Yes.

22 Q. -- and the appropriate areas for those  
23 prices by the colors?

24 A. Yes.

25 Q. How about Request Number 11. What did you

1 prepare for that?

2 A. Request Number 11 is the percentage of  
3 Mideast producer milk diverted to nonpool plants  
4 broken down between distributing plants and  
5 cooperatives showing the high percentage of  
6 diversion percentage and the low percentage for  
7 the month, and also the same for the  
8 cooperatives and the average for each of those  
9 groups of the diversion percentages.

10 Q. Okay.

11 A. And this is of the plants that did divert.  
12 The co-ops and plants that did divert.

13 Q. Request Number 12?

14 A. Request Number 12, we were asked to  
15 estimate how long it would take for milk to  
16 return to the pool with a 115 percent repooling  
17 limit and the maximum to depool, to return in  
18 three months. And assuming 100 pounds, we  
19 calculated that they could depool 34 pounds or  
20 approximately one-third to repool to return to  
21 the pool in three months.

22 Q. As described on the document?

23 A. Yes.

24 Q. Request Number 13?

25 A. Okay. Request 13 is the pounds of milk

1 transported by supply plants to distributing  
2 plants for the months of August through November  
3 in 2003 and 2004. And looking at the movement,  
4 distance moved in 100-mile increments.

5 Q. Okay. Request Number 14?

6 A. Request Number 14 shows the Mideast Class I  
7 value versus the producer value of producer milk  
8 allocated to Class I for the years 2000 through  
9 2004. We looked at the Class I value of the  
10 milk allocated, pricing at skim and butterfat  
11 versus the producer value priced at components  
12 to come up with the difference in those two  
13 values.

14 Q. Okay. For the months and years described  
15 on that -- that page of information?

16 A. Yes.

17 Q. Okay. What did you prepare for Request  
18 Number 15?

19 A. Okay. Request Number 15 is the -- looking  
20 at the proposed Mideast transportation credits,  
21 selected rates by region for the month of  
22 October 2004. And for looking at the  
23 different -- the five regions identified  
24 previously, what the credit would be in the  
25 different rates.

1           We had three-tenths of a cent per  
2 hundredweight per mile, three-and-a-half-tenths  
3 of a percent per mile and \$0.04 per  
4 hundredweight per mile in areas with no credit  
5 for the first 70 miles or miles in excess of  
6 400.

7           Then looking at the same rates with no  
8 credit for the initial hundred miles or miles in  
9 excess of 400 and also the same rates for no  
10 credit with the initial 125 miles or miles in  
11 excess of 400.

12 Q.   Subject to the footnotes?

13 A.   Yes.   With the rates defined in Class I  
14 milk received at pool distributing plants with  
15 dollars per hundredweight per mile.

16 Q.   All right.  What did you prepare in  
17 response to Request Number 16?

18 A.   Number 16 looks at the producer milk  
19 movement across zones in the Mideast Order.  And  
20 you can refer to the map on Request Number 10 to  
21 see what the various zones are, but it shows the  
22 origination zone from the farm, and the "Plant  
23 Zone" being the destination.

24           So you can see in column -- on the  
25 left-hand column where the producer's located in

1 the \$1.70 and they move to the \$2 zone, there  
2 would have been 2,376,024 pounds that moved in  
3 that direction.

4 Q. Uh-huh.

5 A. The shaded areas are the areas where there  
6 was no movement. They stayed in the same zone.

7 Q. Request Number 17?

8 A. Request 17 is the same type of movement  
9 across zones only looking at the average hauling  
10 distance of those movements to the specific  
11 zones. And that is by movement to distributing  
12 plants.

13 Q. Okay. So 16 was pounds and this is -- this  
14 is distance?

15 A. Right. Average distance.

16 Q. Request Number 18?

17 A. Request Number 18 is the same table that we  
18 had previously. The question was worded a  
19 little different, but it is the same  
20 information. But it's the milk to distributing  
21 plants by the distance in region -- in the five  
22 different regions with the average hauling  
23 distance at the bottom.

24 Q. Okay. And Request Number 19?

25 A. In Request Number 19 we were asked to show

1 an example of how we would process a  
2 transportation credit and this is a sample  
3 computation of that. We used an example of a  
4 Cleveland dairy located in Cleveland, Ohio, and  
5 across the four columns there's four different  
6 loads of milk that would be priced out for the  
7 transportation credit. We assumed a 400 mile  
8 limit with no credit for the first 75 miles.

9 For example, we looked at a load of 42,000  
10 pounds coming from Jackson, Michigan being the  
11 county seat of the farm in the -- where the  
12 farm's located, and that would be the county  
13 seat of the closest producer on the load. So  
14 that's the distance we used.

15 We looked at -- then you compute the  
16 Class I utilization of the plant receipts and  
17 you follow the table down through to come out  
18 with their transportation credit. You have to  
19 take into account if there's a zone adjustment  
20 and we arrived at -- in the case of that one  
21 load, \$330.83.

22 Q. And the same process applies to the other  
23 and four locations --

24 A. Correct.

25 Q. -- the other three locations?

- 1 A. Uh-huh.
- 2 Q. All right. How about Request Number 20?
- 3 A. Request 20 is a Recap of Plant Data For  
4 Mideast Producer-Handlers and Pool Distributing  
5 Plants for the month of October 2004. The  
6 number of plants listed, the percent of the  
7 market's Class I by those plants, their average  
8 Class I volume and the Class I volume for the  
9 median size handler in the group, the smallest  
10 third, middle third and largest third of the  
11 group, and then also the market's percentage of  
12 three different groups.
- 13 Q. Okay. When you use the words "median,"  
14 "smallest," "middle," "largest," what do those  
15 terms mean?
- 16 A. Okay. "Median" would be the plant that  
17 falls in the middle of the group. And then the  
18 group was broken down into thirds and looking at  
19 the average of the largest, middle and smallest  
20 group.
- 21 Q. So basically just by volume?
- 22 A. Yes.
- 23 Q. Dividing the smallest third, the middle  
24 third and the largest third?
- 25 A. Yes.

1 Q. Okay. How about Request Number 21?

2 A. The estimated impact of the producer price  
3 differential of a 10 percent reduction in  
4 diversion limits for the month of October 2004.  
5 We had an estimated overdiverted pounds.

6 If there were -- would have been a 50  
7 percent limitation and, in fact, they would have  
8 been overdiverted by 63.8 million, giving an  
9 adjusted pooled pounds of 1,481,976,665, and it  
10 would have changed the producer price  
11 differential \$0.02 if that milk would have been  
12 depooled.

13 Q. Okay. That's a positive number or a  
14 negative? What -- that last number when you  
15 state "\$0.02"?

16 A. It's a positive number.

17 Q. Okay. How about on Request Number 22?

18 A. Request 22 is the Mideast Milkshed Map for  
19 the month of October 2004. It, again, shows the  
20 outline of the marketing area in red, and  
21 there's a legend on the bottom left corner  
22 showing the production of producer pounds and  
23 the counties as indicated by the colors, and the  
24 number in parentheses is the number of counties  
25 in that area.

1 Q. Okay. Now, moving onto the exhibit marked  
2 for identification as Number 9, you got a  
3 request from Dean Foods -- I'm sorry, I skipped  
4 Number 8. Number 8 you got a request from  
5 Michigan Milk Producers Association for  
6 information?

7 A. Yes.

8 Q. And I see one page attached to that. Could  
9 you describe that briefly for the record?

10 A. Yes. This we were asked to compute the  
11 same as Request 15 in the previous exhibit, but  
12 they were changing it to no credit for the first  
13 75 miles with a limit of 350, calculating the  
14 transportation credit for the five regions at  
15 the different rates listed.

16 Q. Okay. Subject to the footnote?

17 A. Yes.

18 Q. All right. You also received a request  
19 from Dean Foods, did you not?

20 A. Yes.

21 Q. And you prepared certain documents in  
22 request to that. Well, it looks like one  
23 document. The exhibit marked Number 9 has a  
24 letter requesting the information and then a  
25 copy of the tables. Is that true?

1 A. Yes.

2 Q. The table shows what, Request Number 1?

3 A. Okay. This shows the deliveries of  
4 producer receipts from Illinois, Iowa, Minnesota  
5 and Wisconsin into distributing plants by month  
6 for the year 2004. It's very similar to the  
7 table we did for DFA, their Request 3, only it  
8 is expanded to include the entire year.

9 And we've included -- down at the bottom  
10 the depooled pounds from each of those four  
11 states for each month was another addition to  
12 the table.

13 Q. Okay. You received a request from  
14 Continental Dairy Products, Inc.?

15 A. Yes.

16 Q. And the exhibit marked Number 10, that  
17 contains the response to the request?

18 A. Yes, it does.

19 Q. It contains the request and the response,  
20 doesn't it?

21 A. Yes.

22 Q. All right. So the -- and going to that  
23 document and Request Number 1, that looks to be  
24 a list of the distributing plants, supply plants  
25 and partially regulated distributing plants. Is

1 that true?

2 A. Yes. For the month of October 2004.

3 Q. Okay. And that's under the Mideast  
4 Marketing Area?

5 A. Yes.

6 Q. Okay. And what do Request Numbers 2 and 6,  
7 the next page, what does that show?

8 A. That is the list of the producer-handlers  
9 for the month of October 2004, and it also  
10 includes the handlers that qualified as exempt  
11 plants in addition to qualifying as a  
12 producer-handler.

13 Q. Okay. How about Requests 3, 4 and 5?

14 A. That is a summary of the producer-handlers  
15 located in the Mideast Marketing Area and  
16 predecessor Orders. We looked at the month of  
17 December and starting in the year 1975 listed  
18 the number of plants. We did not have the Class  
19 I disposition available prior to 2000, but we  
20 did have the counts, and then starting in 2000  
21 then we listed the number of plants and the  
22 total Class I disposition of those  
23 producer-handlers.

24 Q. All right.

25 A. And it also noted there was no single

1 producer-handler had monthly Class I route  
2 disposition in excess of 3,000,000 pounds.

3 Q. Okay. How about Request Number 7?

4 A. It's showing the impact on the producer  
5 price differential if producer-handler route  
6 disposition were included in the pool  
7 calculations. And we looked at December for the  
8 years 2001, '2, '3 and '4, and you can see on  
9 the right-hand column there would be no impact  
10 because of the low volume.

11 Q. All right. Request Number 8?

12 A. Request Number 8 shows the milk voluntarily  
13 depooled on the Mideast Order for the years  
14 2003-2004 in Class II and Class III pounds.

15 Q. Okay. How about Number 9, Request Number  
16 9?

17 A. Okay. Number 9 is a comparison of the  
18 estimated PPD looking at full pooling versus  
19 depooling under the DFA Proposal 5 with a  
20 12-month waiting period. And starting in the  
21 month of July 2003, we have pounds, assuming the  
22 full pooling, and then the first month shows the  
23 actual depooling that did occur, and then for  
24 the next 12 months those 420,000,000 pounds  
25 would be off the pool. Starting in April we had

1 an additional volume depool, so that's why it  
2 jumped up to 650.

3 Q. Okay.

4 A. And then we calculated the PPD assuming  
5 full pooling and then adjusted for the depooling  
6 of those pounds and it showed the change in the  
7 far right column.

8 Q. All right. The positive numbers are -- the  
9 negative numbers are in parentheses?

10 A. Yes.

11 Q. All right. You received a request from --  
12 on behalf of White Eagle Milk Marketing  
13 Federation, Family Dairies, USA and others?

14 A. Yes.

15 Q. I direct your attention to the document  
16 marked for identification as Exhibit 11. The  
17 letter that's under the cover page describes the  
18 request?

19 A. Yes.

20 Q. And in response to that request you  
21 prepared certain information starting with Table  
22 1?

23 A. Yes.

24 Q. Can you tell us briefly what's contained in  
25 that Table 1?

1 A. Okay. First I would like to mention that  
2 we did have a template that Mr. Vetne provided  
3 us and we tried to fill that in with the best of  
4 our ability, but you may see some sections where  
5 we were unable to give all the months. So -- we  
6 put our information in the italics, so if you  
7 see the italics, that's our information.

8 Q. So looking in the document certain  
9 information was provided to you?

10 A. Right.

11 Q. I suppose the title, the columns?

12 A. Right.

13 Q. And you were filling in the numbers and  
14 other information in italics?

15 A. Yes.

16 Q. Okay.

17 A. And in Table 1 for the months December  
18 2003, May 2004 and December 2004, we showed  
19 distributing pool plants by size in the Mideast  
20 Order, with the ranges listed on the left, the  
21 Number of plants in those ranges in the center  
22 column, with the total receipts of bulk fluid  
23 milk products and total of plants in those size  
24 ranges.

25 Q. Okay. And does that -- you're describing

1 the information in Table 1?

2 A. Yes.

3 Q. Okay. Subject to the footnotes that are  
4 there?

5 A. Yes.

6 Q. What's contained in Table 2? I assume now  
7 again it's template?

8 A. Yes.

9 Q. And the same qualifications would apply --

10 A. Yes.

11 Q. -- that you filled in numbers as you were  
12 able?

13 A. Correct.

14 Q. And the other information is contained in  
15 italics?

16 A. Yes.

17 Q. Okay.

18 A. This is the same information as Table 1,  
19 only it's by handler size with the handlers only  
20 being counted once that operate multiple  
21 distributing plants. So there were some  
22 restricted areas that weren't included in the  
23 5,000,000 pound range. And this is for the same  
24 months as the previous table, December 2003 and  
25 2004 and May 2004.

1 Q. Okay. When I look at those tables, when I  
2 see the Number R-1 or R-2, is there some  
3 significance to that Number?

4 A. Yes. That means there are only two  
5 handlers in that category, so it was restricted.

6 Q. And "1" would obviously respond to one  
7 handler?

8 A. One, yes.

9 Q. Okay. Anything else you would like to say  
10 about Table 2?

11 A. I don't think so.

12 Q. Subject to the footnotes, of course?

13 A. Yes.

14 Q. Table 3, another template with the same  
15 qualifications?

16 A. Yes.

17 Q. Okay.

18 A. And this shows the pool distributing plant  
19 supply sources by volume, percentage and handler  
20 type. And this applies to the same months,  
21 December 2003, May 2004, December 2004 with the  
22 categories of receipts from 9(c) handlers with  
23 7(d) or (e) pooled milk, other 9(c) handlers,  
24 patron producers. We consider patron producers  
25 those that were the reporting handler for the

1 producer milk on their reports. Supply plants,  
2 other source bulk milk and total receipts at  
3 pool distributing plants.

4 Q. Okay. Subject to the footnotes?

5 A. Yes.

6 Q. Table 4, what does that contain?

7 A. Table 4 is the pool distributing plant  
8 utilization for the same three months showing  
9 the Class I utilization and the number of plants  
10 and the specific ranges of Class I utilization,  
11 the percentage of the 33 route disposition by  
12 each of those plants -- by those groups of  
13 plants and we were unable to provide milk used  
14 to produce non-Class I products.

15 Q. Okay. When you use the number "Order 33,"  
16 you're referring to the Mideast Order?

17 A. Yes.

18 Q. That's the designation, the number, right?

19 A. Yes.

20 Q. Okay. Table 5?

21 A. Table 5 is the producer milk receipts of  
22 pool distributing plants for which the  
23 distributing plant is the reporting handler. We  
24 gave the information for the month of October  
25 2003 through January 2005.

1           The first column is the physical receipts  
2 of producer milk at those plants, and the second  
3 column is the total receipts including diverted  
4 milk from those plants.

5 Q. All right. So the Number -- okay. The  
6 Number -- the two columns of numbers are in  
7 millions of pounds and receipts -- in physical  
8 receipts and total receipts?

9 A. Yes, they are.

10 Q. Subject to the footnote?

11 A. Yes.

12 Q. Table 6?

13 A. Table 6 is the producer milk receipts and  
14 utilization pounds by plant location for the  
15 Mideast Order for the month of December 2003.  
16 The months we were asked to give, that was the  
17 best representative month we felt and we were  
18 able to give.

19           This is broken down by plant location in  
20 the different states listed and showing their  
21 classification of receipts by Class I, II, III  
22 and IV and the total.

23 Q. Subject to the footnotes?

24 A. Yes.

25 Q. Table 7?

1 A. Is the Mideast Order milk physically  
2 received at pool distributing plants by region  
3 and selected milk sources by location. We  
4 provided the month of October 2004 for the same  
5 regions listed in the previous DFA exhibit where  
6 we listed the regions.

7 Q. Okay. Subject to the footnote?

8 A. Well, the footnote --

9 Q. Yeah.

10 A. -- doesn't exactly apply, because he had  
11 asked us to move some of the plants and we had  
12 already given out the other information, so we  
13 were unable to do that.

14 Q. Okay. What's contained in Table 8(a)?

15 A. Table 8(a) is the producer milk delivered  
16 to distributing plants in the different regions  
17 specified. This, again, shows the plants  
18 identified in the marketing area, in the red  
19 area; and the yellow codes, you can see the  
20 volumes in the bottom left-hand column shows the  
21 milk -- the milkshed area and the volume and the  
22 counties included in those volumes.

23 Q. All right. And there are a series of  
24 tables that follow --

25 A. Yes.

1 Q. -- that show similar information for  
2 other --

3 A. For the same regions.

4 Q. -- for the same -- for the regions  
5 designated on those pages?

6 A. Yes.

7 Q. There's five. I think there are five, five  
8 of those. Let me make sure. I count five --  
9 five tables showing those different areas?

10 A. Yes. For the five regions, uh-huh.

11 Q. Showing the same information subject to  
12 the -- to the color code and the plant  
13 identifications?

14 A. Yes.

15 Q. How about Table 9?

16 A. Table 9, we were asked to give the  
17 classification of producer milk receipts by 7(c)  
18 and (f) pool supply plants, but that information  
19 is restricted due to the count of plants that we  
20 have.

21 Q. Number of handlers you're describing?

22 A. Yes.

23 Q. And the same would apply to the information  
24 requested for Table 10?

25 A. Yes.

1 Q. Okay. Table 11?

2 A. Table 11 we interpreted this to be 7(c) or  
3 (f). It lists 9(c) or (f), but 7(c) or (f)  
4 would apply to supply plants, which then again  
5 is still restricted. We had no (f) supply  
6 plants and the 7(c) were restricted.

7 Q. Okay. Table 12?

8 A. Table 12, again, we interpreted to be 7(e),  
9 and they were restricted in the months that we  
10 had 7(e) plants.

11 Q. All right. Thirteen?

12 A. Table 13 we interpreted as 7(d) and the  
13 information for the 7(d) plants is also  
14 restricted in all months.

15 JUDGE DAVENPORT: In Table 12 you're  
16 indicating there are no qualified plants?

17 THE WITNESS: Yes.

18 MR. STEVENS: Thank you for that.

19 BY MR. STEVENS:

20 Q. Are you finished with 13? Is there  
21 anything you would like to add to that?

22 A. Yes, I'm finished.

23 Q. All right. Table 14?

24 A. Table 14 is the producer milk receipts by  
25 9(c) handlers excluding milk received by -- we

1 interpreted that as 7(c) or 7(f). So what is  
2 shown for the month of October 2003 through  
3 December 2003 is the utilization of those 9(c)  
4 receipts and excluding the supply plant  
5 receipts. And that information was restricted  
6 in January through July, and then is shown again  
7 in August and September of 2004.

8 Q. Okay. And now bringing into account Table  
9 15, your footnote says, "Restricted data due to  
10 information on Table 15," so maybe you could  
11 describe 15 and then relate back to 14?

12 A. Yes. Table 15 shows the producer milk  
13 receipts by type of pooling handler with the  
14 noted restrictions. And that is broken down by  
15 9(c) handlers, supply plants, section (d) and  
16 (e) supply plant receipts and distributing  
17 plant. And in some months those were  
18 restricted, so we were unable to give the  
19 information on the previous because of the  
20 restrictions on Table 15. And where we could,  
21 they were included with the different categories  
22 subject to the footnotes.

23 Q. All right. How about Table 16(a)?

24 A. Table 16(a) is a list of nonpool plants to  
25 which producer milk was diverted. The first

1 section was for December 2003. The plants with  
2 the asterisk are other Federal Order plants that  
3 we had diversions to. And the same information  
4 is given for June and December 2004 on the  
5 tables following.

6 Q. Okay. So as described on the documents,  
7 tables 16(a), 16(b), diverted milk as described  
8 in those documents?

9 A. Yes.

10 JUDGE DAVENPORT: And (c)?

11 MR. STEVENS: Excuse me, and (c).

12 THE WITNESS: Yes.

13 BY MR. STEVENS:

14 Q. Is it the same for (c), also?

15 A. Yes.

16 Q. Thank you. All right. Moving to Table 17?

17 A. Table 17 is a utilization of producer milk  
18 reported by 9(c) handlers by size groupings.  
19 And this section, the four groups, we were only  
20 able to give two groups, the largest three and  
21 the remaining 9(c) handlers by volume. We've  
22 shown for the month of December 2003 and  
23 September 2004. It's the utilization by class  
24 and the total for those two groups for those two  
25 months.

1 Q. Subject to the footnotes?

2 A. Yes.

3 Q. Table 18?

4 A. Table 18 is the estimated monthly volume of  
5 producer milk that would have been depooled to  
6 meet the Proposal 2 diversion limits of 50  
7 percent or 60 percent. And this is the volumes  
8 that would have been depooled given the volume  
9 of pool plant deliveries as constant, so we've  
10 listed that for the years 2003 and 2004.

11 Q. All right. Subject to the footnotes?

12 A. Yes.

13 Q. Yes, sir -- yes, ma'am?

14 A. Yes.

15 Q. Table 19, please?

16 A. Table 19 is the -- a list of the supply  
17 plant handlers for the months listed. We were  
18 unable to give any volumes due to the restricted  
19 number of plants that we had listing the 9 -- or  
20 the 7(c) plants and the months that they were  
21 pooled.

22 Q. All right. Table 20?

23 A. Table 20 is a list of the 7(d) co-op plant  
24 handlers that have shipments to distributing  
25 plants listing the name and location of the

1 plant, the cooperative association that  
2 qualifies them and the months that they were  
3 pooled. And then, again, we were unable to list  
4 volumes due to restrictions.

5 Q. Table 21?

6 A. Table 21 is a list of the plants pooled  
7 under 7(e) and the co-op associations that they  
8 have marketing agreements with and the months  
9 that they were pooled during the time period.

10 Q. The volumes are restricted?

11 A. The volumes, again, are restricted.

12 Q. Table 22?

13 A. Table 22 we are asked to give volume of  
14 additional shipments to distributing plants that  
15 would have been required, but this again is  
16 restricted. The month listed as "N/A," there  
17 were no plants.

18 Q. And you've got a list of the number of  
19 plants?

20 A. Yes.

21 Q. And then restricted or "not available" as  
22 the document represents?

23 A. Yes.

24 Q. Table 23?

25 A. Estimated total producer milk to be pooled

1 by handlers that was voluntarily not reported as  
2 pool milk. And it's basically the same  
3 information we've given before of the equal  
4 milk, only it's broken down by the method of  
5 pooling, whether it was pooled by a 9(c) handler  
6 or a distributing plant, and we've shown those  
7 volumes for the years 2003 through 2004.

8 Q. When they're available and not restricted?

9 A. When they're available. There are some  
10 restrictions as noted on the bottom of the page.

11 Q. Okay. Table 24?

12 A. Table 24 is -- we were asked to look at the  
13 counts of producers and if producers were pooled  
14 on Order 33 during December 2002 that were not  
15 pooled during the preceding months of January  
16 through August of 2002, and we've listed by  
17 state the counties and producers and pooled  
18 pounds that would apply.

19 In Section B, the producers pooled in 33  
20 during December 2003 that were not pooled during  
21 December 2004 listed by state, the number of  
22 counties, number of producers and pooled pounds.  
23 Then C of that same Table is producers pooled  
24 during June 2004 that were not pooled during  
25 December 2002 or December 2003; D is producers

1 pooled during December 2004 that were not pooled  
2 during the preceding two Decembers of 2002 and  
3 2003.

4 Q. All right. Now, the last page is entitled  
5 "Part 2 Requests." You list three requests and  
6 you list the responses; is that right?

7 A. Yes.

8 Q. That's self-explanatory?

9 A. Yes.

10 Q. Anything else you would like to say about  
11 that?

12 A. No. It's pretty self-explanatory, I  
13 believe.

14 Q. All right. Now, just to recap, all of  
15 these documents, Exhibits 6 through 11, 6  
16 prepared by the Market Administrator's office  
17 from your documents and your records pursuant to  
18 your supervision, as the others were based on  
19 requests that you got from the parties that made  
20 those individual requests for the exhibits?

21 A. Yes.

22 Q. All from Department of Agriculture or  
23 Market Administrator official records?

24 A. Yes.

25 Q. Made by you and pursuant to your

1 supervision?

2 A. Yes.

3 Q. None of these are offered in favor or  
4 against any of the proposals, are they?

5 A. No, they're not.

6 Q. For the use of the parties at the hearing  
7 for the purposes they require?

8 A. Yes.

9 MR. STEVENS: Your Honor, I'm  
10 going to ask for these to be admitted, but  
11 certainly the witness is subject to  
12 cross-examination.

13 JUDGE DAVENPORT: Objections as to  
14 admissibility at this time? There being none,  
15 they'll be admitted subject to  
16 cross-examination.

17 MR. STEVENS: Thank you, Your  
18 Honor. I offer the witness.

19 JUDGE DAVENPORT: We'll open the  
20 general floor. Mr. Beshore?

21 MR. BESHORE: Thank you, Your  
22 Honor.

23 CROSS-EXAMINATION

24 BY MR. BESHORE:

25 Q. Good morning, Ms. Uther. First of all, on

1    behalf of the parties that I'm representing, I  
2    would like to express our appreciation for the  
3    tremendous effort that you and Mr. Walker,  
4    Mr. Huber and the rest of your staff have put  
5    into preparing information for this hearing.  
6    It's extremely helpful in having it available,  
7    most of it, several days ago is very, very  
8    helpful. We really do appreciate that and know  
9    that it represents a tremendous effort on your  
10   part. I would like to turn to Exhibit 6 first.

11   A.    Okay.

12   Q.    Table 15. Now, this is just a  
13   clarification question. Are these monthly  
14   average information?

15   A.    It's a yearly weighted average. It's  
16   for -- it's an average for the entire year of  
17   the production ranges.

18   Q.    Okay. So the average of pounds of milk,  
19   1,312,549 is the monthly average for the year?

20   A.    Yes.

21   Q.    Okay.

22   A.    Yes.

23   Q.    And the same thing would apply then to the  
24   number of producers --

25   A.    Yes.

1 Q. -- an average, weighted average month for  
2 the year?

3 A. Yes.

4 Q. Okay. Thank you. Table 17, which is the  
5 receipts of producer milk by state and county  
6 for May and December 2004, am I correct that  
7 those are months for which the Market  
8 Administrator routinely collects and publishes  
9 this data set?

10 A. Yes, it is.

11 Q. And for 2004 they're not picked or intended  
12 to be representative months during the year in  
13 terms of depicting the pools throughout the  
14 year?

15 A. No. Those are just the months that we  
16 always use.

17 Q. Okay. And I ask that question simply  
18 because if you look, for instance, at the State  
19 of Wisconsin, in 2004 the pounds of milk pooled  
20 from Wisconsin during May was 27.6 million and  
21 December 38.1 million, not representative of the  
22 volumes pooled from that state during the  
23 course -- full course of the year?

24 A. No.

25 Q. Thank you. Now, turning to Exhibit 7,

1 which was prepared at our request, the request  
2 of -- specific written request of Mr. Hollon,  
3 let me first go to Request Number 1(a), Mideast  
4 Producer Milk, By State, 2000-2004. On the  
5 first page of Request Number 1(a), in the year  
6 2002 do I correctly note that there was milk  
7 from the State of California pooled on Order 33  
8 during five months of that year?

9 A. Yes, there was.

10 Q. I would like to turn next to Request 1(b)  
11 and the last -- the last page. Now, this --  
12 this request reflects the months of December for  
13 each year, 2000 through 2004; is that correct,  
14 state and county?

15 A. Yes, it does.

16 Q. And, again, if you go to the State of  
17 Wisconsin, the last page of Request 1(b), the  
18 pools in December of 2004 were much less than  
19 December of any of the other years, correct?

20 A. Yes.

21 Q. And that's a reflection of the phenomenon  
22 we call depooling?

23 A. You will note there was several -- there  
24 were a lot of pounds depooled in that month  
25 you'll see on the next request -- no, not the

1 next request, but --

2 Q. Several of the other requests?

3 A. Yes. Request 5 was the depooling pounds.

4 Q. Okay. Let's look at Request Number 2

5 first, just the next page, estimated impact.

6 A. Uh-huh.

7 Q. I note in the final column to the right,

8 impact on PPD of distant milk, some of those

9 numbers beginning like with August 2003 are

10 positive numbers, \$0.06?

11 A. Yes.

12 Q. How -- how do we get positive numbers in

13 this column? Most of them are negative. The

14 negative numbers are bigger, but there are some

15 positive numbers. Can you shed any light on

16 that?

17 A. Well, in the months of August through

18 November those are qualifying months and milk is

19 pooled those months. The months that you -- the

20 prices are beneficial to depool, you would have

21 a positive number if there's milk still pooled

22 in the months. And the months that the prices

23 are beneficial to draw out of the pool, you

24 would have a negative number when that milk is

25 pooled.

1 Q. Okay. So, for instance, the first --  
2 August, September and October of 2003 when the  
3 numbers show positive, that's -- those are  
4 performance months, I think. Is that what you  
5 call them?

6 A. Yes. Touch base months we call them where  
7 you're required to pool two days' production of  
8 all producers.

9 Q. Okay. So in months when milk from distant  
10 states is required by the Order regulation to be  
11 delivered to the market, touch base as you've  
12 indicated, it can have a positive effect on the  
13 Order 33 pool?

14 A. Yes. Depending on what the prices are for  
15 that month.

16 Q. Okay. And does that happen in part because  
17 when it's delivered to pool distributing plants  
18 for touch -- when it touches base at plants,  
19 there may be Class I utilization applied to  
20 those deliveries?

21 A. Not necessarily applied to those  
22 deliveries, but just the price relationships for  
23 that month. If you pool milk and Class I prices  
24 are higher than the blend price, then you have a  
25 positive producer price -- you know, let me

1 rephrase that.

2           If it would be the other way and there  
3 would be a negative producer price differential  
4 or low producer price differential, you could  
5 see a positive impact on PPD when the distant  
6 milk does come in.

7 Q.   Okay.  And that in particular, in April  
8 2004, when there's a positive \$0.11, that was a  
9 month of large volumes of depooling, was it not?

10 A.   Yes, I believe so.

11 Q.   Okay.  For instance, in April -- let's see,  
12 April 2004, this exhibit shows that the State of  
13 Wisconsin there was only 21 million pounds of  
14 milk pooled.

15 A.   Yes.

16 Q.   But because of the price relationships that  
17 month, that nevertheless has the positive effect  
18 on the PPD in the Order?

19 A.   Yes.

20 Q.   And the same thing would be true in  
21 December of 2004, which is another -- another  
22 month of large depooling, was it not?

23 A.   Yes, it was.

24 Q.   So is it fair to say in those months of  
25 major depooling when there's distant milk still

1 providing a positive impact on the PPD, it's  
2 probably -- or it's necessarily distant milk  
3 used for depooled purposes, cheese primarily,  
4 where the class price is higher than the PPD,  
5 but it had to be pooled and couldn't be  
6 depooled?

7 A. Yes. Because they still must remain  
8 associated with the market and a day's  
9 production must be pooled. So if that milk was  
10 used for Class III, which was a higher priced  
11 class that month, then, yes, it would have a  
12 positive impact.

13 Q. Okay. So under present Order regulations  
14 when you have months of major depooling like  
15 April 2004, December 2004, in order to retain  
16 association with the market, one month's volume  
17 from each producer must remain pooled?

18 A. One day's production.

19 Q. One day's?

20 A. One day's production.

21 Q. One day's production. Okay. And that  
22 would be reflective of at least some, maybe  
23 most, maybe almost all the volumes that are  
24 pooled from the distant sources in those months?

25 A. Yes, it could be. Because if they took all

1 their milk off the market they would have to be  
2 associated again and come into a pool plant.

3 Q. So presently the Order -- the Order has a  
4 mechanism which requires one day's milk of a  
5 producer to be pooled in a month, even though  
6 the rest is depooled, in order for that producer  
7 to have all of its milk pooled the next month if  
8 it works financially?

9 A. Yes, to remain associated. If you were to  
10 take all of his milk off the market, he would  
11 just have to reassociate before he could be  
12 pooled again.

13 Q. But if he keeps one day on, he doesn't have  
14 to reassociate at all?

15 A. Correct.

16 Q. Okay. Could you turn then to Request  
17 Number 11?

18 A. (Witness complies with the request.)

19 Q. Okay. Now, I just want to see if I  
20 understand the information depicted on Request  
21 Number 11. Under the category of distributing  
22 plants, does this represent just milk pooled by  
23 those distributing plants as the reporting  
24 handler?

25 A. Yes.

1 Q. Okay. And on the cooperative sector, it's  
2 milk pooled by cooperatives as the reporting  
3 handler?

4 A. Yes.

5 Q. And the high number -- the high range in  
6 both cases is -- is what? It's the most -- the  
7 maximum diverted percentage that you observe  
8 among distributing plants?

9 A. Yes. For instance, if we had six  
10 distributing plants that have diversions to  
11 nonpool plants, the one that had the highest  
12 level of diversions was the high, and the one  
13 with the lowest was the low.

14 Q. Okay. So if you look at performance -- the  
15 high demand months in the marketing year, fall  
16 months, August, September, October, November,  
17 does the exhibit show that distributing plants  
18 pooling milk during those months when their own  
19 needs for their own purposes are the highest,  
20 when Class I demand is the highest, there  
21 were -- there was at least one distributing  
22 plant in each month diverting more than 50  
23 percent of its producer milk?

24 A. Yes.

25 Q. And "diverting" means not using it for its

1 purposes at the distributing plant, but  
2 delivering it to nonpool plants?

3 A. Yes. This Table also doesn't take into  
4 account volumes of those plants diverting.

5 Q. If you turn to Request 14 then, please --

6 A. (Witness complies with the request.)

7 Q. -- you probably explained this precisely,  
8 but I want to make -- I want to make certain.  
9 This -- for any given month, this is a  
10 comparison of the Class I value of milk at the  
11 class -- minimum class prices?

12 A. Yes.

13 Q. And classic component prices, I guess?

14 A. Yes. Or the producer milk allocated to  
15 Class I in the pool.

16 Q. For producer milk allocated to Class I.  
17 All right. And the producer value, meaning the  
18 minimum component values of the same volume of  
19 producer milk, determined on a blended basis?

20 A. Yes. The same volume of milk at the  
21 producer components, at the producer price  
22 differential and the components.

23 Q. The difference then being the additional  
24 value over and above the minimum producer value  
25 that the Class I volumes contribute to the pool

1 beyond the blended producer values?

2 A. Yes.

3 Q. Now, there are ranges in those amounts as  
4 is obvious from month to month. Would it be  
5 fair to say that those ranges reflect  
6 differences in the Class I price value versus  
7 the producer component values which are based on  
8 Class III?

9 A. Yes.

10 Q. Okay. The next Table then is Request  
11 Number 15. Am I correct that the locations in  
12 the left column, the state location, is that the  
13 location of the plant to which the milk was  
14 delivered?

15 A. No. It's the location where the producers  
16 are.

17 THE WITNESS: Correct? Yes.

18 BY MR. BESHORE:

19 Q. It's the location --

20 A. Where the producers are located.

21 Q. It's the location of the producers. Okay.  
22 So taking the first observation then, producers  
23 in Indiana who deliver milk to Class I plants  
24 wherever located, would have been entitled to --  
25 there would have been \$107,131 of transportation

1 credits for which those deliveries would  
2 qualify?

3 A. Yes. At that rate. At the three-tenths of  
4 a hundredweight per mile.

5 Q. And you're confident that those locations  
6 are the producer locations?

7 THE WITNESS: They're the plant  
8 location?

9 MR. BESHORE: Maybe you can check  
10 that.

11 MR. STEVENS: Your Honor -- could  
12 we check that for you?

13 MR. BESHORE: Absolutely.  
14 Whenever. At a break we can clarify that.

15 MR. STEVENS: Okay. Thank you.

16 JUDGE DAVENPORT: Speaking of which,  
17 Mr. Beshore, we're getting very close to the  
18 midpoint of the morning. Let's finish up -- I  
19 gather you have a few more questions as to the  
20 other portions of 6?

21 MR. BESHORE: I've got just a  
22 couple other questions on 6, and then I would be  
23 glad to take a break.

24 JUDGE DAVENPORT: Maybe if we could  
25 break after that?

1 MR. BESHORE: Okay.

2 BY MR. BESHORE:

3 Q. When you move to the next -- Request Number  
4 16 and tables -- in Exhibit 6, the bolded  
5 numbers on both Request Number 16 and Request  
6 Number 17, does that reflect volumes that are  
7 shipped from a higher zone to a lower?

8 A. Yes.

9 JUDGE DAVENPORT: Let me just ask you  
10 to clarify. You're talking bold, or shadowed or  
11 italicized.

12 MR. BESHORE: Actually, bolded  
13 and italicized, I think they are.

14 JUDGE DAVENPORT: All right.

15 THE WITNESS: Yes. Those are  
16 movements to a lower zone. For instance, the \$2  
17 producer location to a 1.80 plant location is in  
18 bold, 1,172,359.

19 BY MR. BESHORE:

20 Q. And on both Request Number 16, the table in  
21 Request Number 16, and Table Number 17, the bold  
22 and italicized observations are below the shaded  
23 numbers on the table?

24 A. Yes.

25 Q. Thank you. Okay. Now, could you please

1 turn to Request Number 19 of Exhibit 6 --

2 Exhibit 7, I'm sorry. Request Number 19, yes.

3 The sample computation of the transportation

4 credit, was this -- this based on which mileage

5 assumption, a minimum -- an exempt 75 miles and

6 then nothing in excess of 400?

7 A. Yes.

8 Q. Okay. The "Class I Utilization at Plant of

9 Receipt," line five, you used the 87.52

10 percent --

11 A. Yes.

12 Q. -- in this Table? Was that drawn from

13 any --

14 A. No. That's just a hypothetical plant

15 example we used.

16 Q. Okay.

17 MR. BESHORE: Those are the only

18 questions I have at the moment, Your Honor, on

19 Exhibit 7, and I would be glad to take a break

20 at this time.

21 JUDGE DAVENPORT: Very well. We can

22 take a break at this time. What's everybody's

23 pleasure? Say, 10 minutes, 15?

24 MR. BESHORE: Fifteen.

25 JUDGE DAVENPORT: Fifteen minutes.

1 Let's be back at 10:25 then.

2 MR. BESHORE: Thank you.

3 (Thereupon, a recess was taken.)

4 JUDGE DAVENPORT: If we could, let's  
5 see if we can't get started again. Let the  
6 record reflect that we're back in session.  
7 Mr. Beshore.

8 MR. BESHORE: Thank you, Your  
9 Honor.

10 BY MR. BESHORE:

11 Q. Ms. Uther, I would like to turn to Exhibit  
12 10, Request Number 8 of Continental Dairy  
13 Products, Inc. There are two columns shown as  
14 requested, I assume, for milk voluntarily  
15 depooled Class II and Class III.

16 Would it not be correct that it also would  
17 have been in some months a Class IV milk  
18 depooled?

19 A. In that time period we had no Class IV  
20 depooled.

21 Q. No Class IV depooling --

22 A. Yes.

23 Q. -- during either 2003 or 2004?

24 A. No, I don't believe so.

25 Q. Okay. Now, are -- if there are

1 butter/powder plants in the Order which are  
2 cooperative plants and qualified as cooperative  
3 plants --

4 A. Yes.

5 Q. -- are the volumes to those plants pooled a  
6 hundred percent of the time as by definition?

7 A. I'm sorry. I'm not sure what you're  
8 asking.

9 Q. Well, if you have, you know, a cooperative  
10 plant by operation of the Order, is it not the  
11 case that that plant is pooled -- all of its  
12 receipts are pooled all of -- a hundred percent  
13 of the time?

14 A. Yes. If they are a fully regulated plant,  
15 then the receipts going in there would have to  
16 be pooled, yes.

17 Q. Okay. And the plant's qualified by -- not  
18 by deliveries from the plant, but by other  
19 deliveries that's part of the cooperative unit?

20 A. Yes. In some cases.

21 Q. So in those months, some of those months  
22 when it was advantageous to depool Class II by  
23 arithmetic or economics, it would have been  
24 economically advantageous to depool Class IV  
25 prices as well?

1 A. It could be.

2 Q. Probably. If you could do it?

3 A. I -- I don't think there was any in those  
4 months, though.

5 Q. Okay.

6 A. I think in past years we may have had some  
7 Class IV depooled.

8 Q. Turning then to Exhibit 11, Table 2 which  
9 identifies -- in which you identified at  
10 Mr. Vetne's request a number of handlers by size  
11 range --

12 A. Yes.

13 Q. In the over 25 million category -- or in  
14 category when you were identifying the numbers  
15 by handler, is it correct that a multiplant  
16 handler would only be indicated as one handler  
17 on this report?

18 A. Yes, it would.

19 Q. So that Dean Foods Company, for instance,  
20 which operates more than one plant is only  
21 identified as one handler?

22 A. Yes, it is.

23 Q. And the same thing would be true for  
24 National Dairy Holdings, for instance, if it has  
25 more than one plant?

1 A. Yes. That has multiple plants.

2 Q. Now, if you turn to Table 3, Exhibit 11,  
3 can you explain, please, the difference between  
4 9(c) handlers with 7(d) or (e) pooled milk and  
5 other 9(c) handlers?

6 A. The 9(c) handlers with 7(d) or (e) pooled  
7 milk would mean any cooperative that operates  
8 a -- and qualifies a 7(d) plant. All of their  
9 receipts would be listed in the first column and  
10 any other 9(c) handlers that don't operate one  
11 of those plants or qualify one of those plants  
12 would be listed in the other 9(c) handler.

13 Q. Okay. Now 9(c) handlers are by definition  
14 cooperatives?

15 A. Yes.

16 Q. And 7(d) plants are what type of plant?

17 A. It is a supply plant operated by a  
18 cooperative and qualified based on the  
19 cooperative's receipts and deliveries in total  
20 rather than on plant deliveries.

21 Q. Okay. Would you turn to Table 5, please,  
22 Exhibit 11?

23 A. (Witness complies with the request.)

24 Q. And this is -- this is basically  
25 clarification. I want to make sure I've got it.

1 These are what, the aggregate producer milk  
2 receipts reported by pool distributing plants in  
3 the Order?

4 A. Pool distributing plants for which the --  
5 they are the handler for their milk. So any  
6 pool distributing plant that has milk pooled on  
7 a 9(c) report would not be included.

8 Q. So those volumes -- those 9(c) deliveries,  
9 pool distributing plants are not reported at all  
10 here?

11 A. No.

12 Q. So if you go back to Table 3 then, if you  
13 refer back to Table 3, is Table 5 simply a  
14 breakout or -- basically a breakout of the  
15 utilization -- of the deliveries of milk in the  
16 patron producer's column?

17 A. Yes. It's just a monthly listing. Like,  
18 for example, if you look at December 2003 under  
19 the patron producer on Table 3 --

20 Q. Yes.

21 A. -- that 61.69 percent, you will see that on  
22 Table 5, December physical receipts for  
23 distributing plant with patron producers.

24 Q. Okay. So what we see in Table 5 then is  
25 that distributing plants in the Order are only

1 the reporting handler for the December 2003 less  
2 than 10 percent of their milk requirements at  
3 the plant?

4 A. Yes. So the total going to distributing  
5 plants, yes.

6 Q. Okay. And while those distributing plant  
7 handlers are only acquiring less than 10 percent  
8 of their supply from their own patrons, they're  
9 nevertheless diverting to other sources the  
10 amounts -- the volumes indicated on Table 5  
11 which is the difference between physical  
12 receipts and total receipts?

13 A. Yes.

14 Q. On Table 7 of Exhibit 11 the "N/A" in the  
15 column for May 2004, is that because the  
16 number's restricted?

17 A. No. It's just the -- we were asked to give  
18 that information for May and October, and we  
19 were only able to give it for October due to  
20 time constraints, so --

21 Q. Okay. You just weren't able to assemble it  
22 for May?

23 A. Yes, that's correct.

24 Q. I take it that then this -- this table for  
25 October shows the aggregate receipts at all

1 distributing plants in the Order from those  
2 delivery areas, or that's plant location?

3 A. It's plant locations in those areas. It's  
4 received at distributing plants within those  
5 areas.

6 Q. And it's the total milk physically received  
7 at the plants in those areas?

8 A. Yes.

9 Q. Okay.

10 MR. BESHORE: Thank you. Those  
11 are all the questions I have at this time.

12 JUDGE DAVENPORT: Thank you, sir.  
13 Are there other questions for this witness?

14 Mr. English?

15 CROSS-EXAMINATION

16 BY MR. ENGLISH:

17 Q. Good morning. And I join in Mr. Beshore's  
18 comments in thanks.

19 A. Good morning.

20 Q. This is a lot of good effort. We  
21 appreciate it.

22 MR. ENGLISH: Your Honor, just  
23 for clarification, and I think I have told a  
24 number of the parties this, but as we go  
25 forward, it may or may not shorten the hearing a

1 little bit if I disclose this early on, Proposal  
2 Number 3 proposed by Dean Foods Company contains  
3 two pieces; one is a proposal to amend the touch  
4 base standard, and two is a provision for the  
5 exact definition of temporary loss of Grade A  
6 approval.

7 We intend to provide testimony and  
8 brief only the issue regarding exact definition  
9 of temporary loss of Grade A approval, and we  
10 will not be putting in testimony or briefing,  
11 that is to say, supporting an amendment for a  
12 touch base provision, which is the --  
13 effectively paragraphs 2 and 3 of Proposal  
14 Number 3.

15 JUDGE DAVENPORT: Very well.

16 BY MR. ENGLISH:

17 Q. Having thanked you for providing all this  
18 wonderful data, I'm now about to abuse the  
19 privilege by asking for a little more. Looking  
20 at Request Number 22, Response Number 22, which  
21 is Exhibit Number 7, you provided us a map, a  
22 Mideast milkshed map for October 2004 showing  
23 over a billion, five pounds. Do you see that?

24 A. Yes.

25 Q. And I notice you've given us, you know, all

1 of the breakdowns for December '04 and I confess  
2 that I am a little colorblind or whatever, it  
3 makes it a little hard for me to do. I was  
4 wondering how difficult it would be to provide a  
5 breakdown for each county in tabular form for  
6 October 2004 just to back that up?

7 THE WITNESS: Do we have that for  
8 October?

9 MR. ENGLISH: I didn't see it  
10 anywhere, but I mean --

11 THE WITNESS: We may have given  
12 it in the other ones, but --

13 BY MR. ENGLISH:

14 Q. May and December in Exhibit 6. I see  
15 mostly December in Exhibit 7.

16 A. Yeah. We can get that together for you.

17 Q. Terrific. I would appreciate that. And  
18 then as to the various requests by Michigan Milk  
19 and DFA for calculation of the Mideast  
20 transportation credit, there are various  
21 scenarios of no -- nothing for under 75 miles or  
22 a hundred or 125 and nothing above 350 or 400?

23 A. Right.

24 Q. Would it be possible by the end of the  
25 hearing to provide, with the same upper limits

1 350 or 400, but no lower limit --

2 A. I --

3 Q. -- a compilation --

4 A. I think we probably --

5 Q. -- for October 2004?

6 A. October 2004?

7 Q. Yes. The same month that you've provided  
8 it so we can compare it to those others. So no  
9 lower limit, but the same upper limit for the  
10 various options.

11 A. Okay.

12 JUDGE DAVENPORT: Your witness is  
13 very gracious.

14 MR. ENGLISH: That's why I  
15 thanked her first. Be careful when lawyers say,  
16 "Thank you."

17 BY MR. ENGLISH:

18 Q. Turning to Exhibit 6, I'm going to follow  
19 up on a couple of the questions asked by  
20 Mr. Beshore.

21 On Table 11, Exhibit 6, which is Class III  
22 Disposition At Pool Plants, there -- as you've  
23 discussed with Mr. Beshore are some changes as  
24 you go through. For instance, from March of '04  
25 there's 446 million pounds and in April only 42

- 1 million pounds. In November there's 620 --  
2 almost 625 million pounds dropping to 123 and a  
3 half million in December. Do you see those  
4 numbers?
- 5 A. I'm sorry. What table are you on?
- 6 Q. Table 11 in Exhibit 6.
- 7 A. Oh, the Class III disposition?
- 8 Q. The Class III disposition.
- 9 A. Okay.
- 10 Q. The first column, "Cheese."
- 11 A. Okay. Yes.
- 12 Q. You see those numbers that I was just  
13 discussing?
- 14 A. Yes, uh-huh.
- 15 Q. And this is, again, this phenomenon of  
16 depooling; is that correct, or it depicts it?
- 17 A. There was less pooled in those months to  
18 cheese production, yes.
- 19 Q. But it doesn't mean that cheese wasn't  
20 being produced, does it?
- 21 A. Only that it wasn't pooled in our market.
- 22 Q. To your knowledge, in our industry, was  
23 there, you know, that significant a drop-off in  
24 production of cheese nationwide in those months?
- 25 A. Not to my knowledge.

1 Q. And turning to Tables 13 and 14, which is  
2 your route sales within the marketing area and  
3 total route sales by pool distributing plant --

4 A. Yes.

5 Q. -- I just wanted to help define some of  
6 these categories for the record for a moment.

7 Pool plants, of course, are pool  
8 distributing plants under Section 7(a) or (b) of  
9 this Order, correct?

10 A. Yes, that is correct.

11 Q. A partially regulated plant would be a  
12 plant, whether or not within this marketing  
13 area, that has route disposition, but not  
14 sufficient route disposition to qualify as a  
15 7(a) plant, correct?

16 A. That is correct.

17 Q. But nonetheless, it's responsible as a  
18 partially regulated plant?

19 A. Yes.

20 Q. Producer-handler and exempt plants, these  
21 are two categories of plants, one, plants that  
22 are exempt plants that have less than 150,000  
23 pounds and producer-handlers that essentially  
24 have their own farm production, correct?

25 A. Yes.

1 Q. Other Federal Order route sales, that would  
2 be pool distributing plants, effectively 7(a)  
3 plants, on other Orders with sales into Order  
4 33?

5 A. Yes, that is correct.

6 Q. So, for instance, if a plant is regulated  
7 on the central Order, Order 32, but has route  
8 sales into Indiana, those sales would be  
9 depicted --

10 A. Yes.

11 Q. -- in this area?

12 A. Yes.

13 Q. Similarly, on Table 14 you've now divided  
14 upped total route sales by pool distributing  
15 plants. That is to say, again, 7(a) or 7(b)  
16 plants under this Order, correct?

17 A. Yes.

18 Q. And the in-area sales would be sales that  
19 you have tracked to have made to be within the  
20 marketing area?

21 A. That's correct.

22 Q. Sales in the other Federal Order would be  
23 the reverse of what we're talking about, with  
24 Federal Order plants having sales over here, so,  
25 for instance, a plant in Indiana with sales back

1 in the Central Order, or in Order 30?

2 A. Yes.

3 Q. And then you have a category called sales  
4 into unregulated areas.

5 A. Correct.

6 Q. Would I be correct that just for  
7 clarification this would be sales in the  
8 federally unregulated areas, because conceivably  
9 you have sales into areas that are not regulated  
10 by the feds, but nonetheless regulated by some  
11 state entity?

12 A. Yes. It's unregulated and no Federal  
13 Orders.

14 Q. So, for instance, sales here would capture  
15 sales from 7(a) or 7(b) plants on Order 33 into  
16 central Pennsylvania?

17 A. Correct.

18 Q. Which is not federally regulated, but is  
19 regulated by the Commonwealth of Pennsylvania,  
20 correct?

21 A. Right.

22 Q. Sales into -- if there are such, sales into  
23 the central part of Missouri, which are not  
24 federally regulated, correct?

25 A. Correct.

1 Q. And sales into a small portion of Northern  
2 Ohio that is not regulated?

3 A. Yes.

4 Q. That's all I have on Exhibit 6. Turning to  
5 Exhibit 7 and Request -- in response to Request  
6 Number 2, again a bit of a follow-up on  
7 questions asked by Mr. Beshore, Request Number 2  
8 is the Estimated Impact of Distant Milk Pooled  
9 on Mideast Order.

10 Mr. Beshore asked you a couple of  
11 questions, for instance, about the months of  
12 April and December of 2004. And you had some  
13 discussion about the positive \$0.11 impact that  
14 the month of April impact on PPD that distant  
15 milk had, correct?

16 A. Correct.

17 Q. If -- assume with me the following. Assume  
18 that the Wisconsin milk, instead of being the 21  
19 and a half million pounds, had been the volume  
20 in February of 277 million pounds, and assume  
21 that the bulk of that milk would be Class III,  
22 would it be the case that the impact on the PPD  
23 of the distant milk had that milk been pooled  
24 and had it been in Class III been a higher  
25 positive value than PPD than the \$0.11?

1 A. Yes.

2 Q. So that by not being pooled, the positive  
3 impact of having a 21,536,861 was depressed from  
4 what it could have been had the milk remained  
5 pooled, correct?

6 A. Yes. The more Class III milk that would  
7 have been pooled, the higher the price would  
8 have been.

9 Q. And then as to the December milk, but also  
10 the April milk, you had some discussion with  
11 Mr. Beshore about the idea of maintaining one  
12 day's supply that is pooled, correct?

13 A. Yes.

14 Q. Pooled is not necessarily the same thing as  
15 delivered, is it, to a pool distributing plant?

16 A. No.

17 Q. The milk that was pooled could very easily,  
18 if it had touched base and met the requirements  
19 of prior months, remained entirely in Wisconsin  
20 for that month, correct?

21 A. Yes.

22 Q. And, indeed, it is really nothing more than  
23 a stroke of the pen that says how much of that  
24 volume -- minimum of one day admittedly, but a  
25 stroke of the pen, could have been two days,

1 could have been five days, could have been ten  
2 days, it's nothing more administrative, an  
3 administrative task of a stroke of the pen, as  
4 to how much of that milk is pooled considering  
5 it stays in Wisconsin, correct?

6 A. Yes, I would say so.

7 Q. And then the following month, assuming they  
8 have met their one day continuous pool status  
9 and they want to bring the milk back on, it's  
10 nothing more than a reverse stroke of the pen to  
11 bring it back on?

12 A. You mean if it had been pooled, if it had  
13 been continuous?

14 Q. Assuming that they pooled one day, they  
15 continued in the association of one day, if the  
16 economics are in their favor in the following  
17 month, it is nothing more than taking the same  
18 pen, a different piece of paper with the same  
19 chart for a different month and moving the  
20 volume from one place to the other on that piece  
21 of paper and then pooling it?

22 A. If they remained associated, they're  
23 eligible to be pooled, yes.

24 Q. And I apologize. I was out of the room  
25 briefly when we got restarted. Did you clarify

1 the answer to the question for Mr. Beshore  
2 whether that was plant location or producer  
3 location?

4 A. No. We had not gone back to that, so I  
5 will do that now.

6 Q. Okay.

7 A. That is --

8 JUDGE DAVENPORT: Permission to yield  
9 the floor back to Mr. Beshore?

10 MR. BESHORE: No.

11 THE WITNESS: Okay. That is  
12 deliveries to plants located in those five  
13 regions, the same regions that were identified  
14 previously, deliveries to those.

15 BY MR. ENGLISH:

16 Q. As opposed to where the producers are?

17 A. Right.

18 JUDGE DAVENPORT: Excuse me, counsel.

19 MR. VETNE: There was no  
20 renewed reference to the exhibit, I'm sorry.

21 (Thereupon, a discussion was held off  
22 the record.)

23 MR. VETNE: John Vetne. What  
24 are you looking at?

25 THE WITNESS: That is Request

1 Number 15 in the same -- in Exhibit --

2 MR. ENGLISH: Exhibit 7.

3 THE WITNESS: -- in Exhibit

4 Number 7 where Mr. Beshore had asked the regions  
5 located, if that was where the farms are located  
6 in those regions or the plants, and it is the  
7 plants. It is deliveries to the plants in  
8 that -- in those specific regions.

9 MR. ENGLISH: Thank you for that  
10 clarification, Your Honor.

11 BY MR. ENGLISH:

12 Q. And that's also Exhibit 8, the Request  
13 Number 1 of Michigan Milk Producers. It's the  
14 same answer as the plants, correct?

15 A. Yes.

16 Q. So similarly now going to Request 7 for  
17 Exhibit 7, which is the Mideast Marketing Area  
18 Producer Milk to Distributing Plants By Distance  
19 and Region, for each of those categories,  
20 Northern Ohio, Southern Ohio, Michigan, Indiana  
21 and Pennsylvania, it's where the plant is  
22 located?

23 A. Yes. The plants in those regions.

24 Q. So, for instance, just tying it, for  
25 Pennsylvania for the month of October 2004,

1 there was one or more plants in Pennsylvania  
2 that received 47,700 milks -- pounds of milk  
3 from 621 to 640 miles, from farms located 621 to  
4 640 miles away from that plant, correct?

5 A. Yes.

6 Q. And then on the Requests 8(a) through 8(e)  
7 there was a little -- I'm confused, so let me  
8 see if I understand it.

9 You've got one category called "Total Class  
10 I Sales, 86,546,680."

11 A. Yes.

12 Q. Is that the total Class I sales from the  
13 seven distributing plants listed on that page?

14 A. Yes, it is.

15 Q. Regardless of whether they were out of that  
16 area, that's their total sales, total Class I  
17 route sales?

18 A. Yes.

19 Q. Okay. Then the second category is "Total  
20 Pooled Producer Pounds." Is that the total  
21 pooled producer pounds associated with those  
22 Class I plants, or is that the total pooled  
23 producer pounds produced on farms located in  
24 that area?

25 A. In this request it's the producers located

1 in that area.

2 Q. And that is different from your response to  
3 Mr. Vetne in Exhibit 11 where you produced  
4 similar maps, and I'm looking now on table 8(a),  
5 for him, his total Class I sales is the same  
6 number as yours, so that was the same  
7 calculation, correct?

8 A. Yes.

9 Q. But you have total producer milk which is a  
10 much different volume from what you've listed in  
11 8(a) which is the milk produced in the region.

12 So would I be right to say the total  
13 producer milk, on the response to Exhibit 11,  
14 Table 8(a), of 92,080,764 is the total producer  
15 milk associated with those plants, those seven  
16 plants?

17 A. That's correct.

18 Q. I apologize. I'm going to go back to  
19 Request Number 14 one more time, still Exhibit  
20 7. This is the Mideast Class I Value Versus  
21 Producer Value of Producer Milk Allocated to  
22 Class I.

23 If I may state it my way for a second and  
24 if I'm wrong we'll figure it out, but the  
25 difference column, is the difference column --

1 does the difference column represent the Class I  
2 contribution to the producer price differential?

3 A. Yes, it does.

4 Q. Thank you. I am done with Exhibit 7.  
5 Briefly on to Exhibit 9, which was your response  
6 to the request from Dean Foods, you've got a  
7 line at the very bottom, again, which is  
8 "Depooled pounds - Illinois, Iowa, Minnesota,  
9 Wisconsin."

10 This has been prepared in the same way that  
11 you prepared the other data with respect to your  
12 assumptions and what constitute depooled pounds?

13 A. Yes. For those four states in total.

14 Q. Turning to Exhibit 11, and Tables 16(a),  
15 16(b) and 16 C, but I'm going to ask a generic  
16 question, a couple, three questions, this is the  
17 one headlined Mideast Milk Order Nonpool Plants  
18 to which Producer Milk Was Diverted, December  
19 2003, June and December 2004, correct?

20 A. Yes.

21 Q. And there's an asterisk. Was the asterisk  
22 which has been labeled "Nonpool plants that are  
23 pool plants under other Federal Milk Marketing  
24 Orders are identified by an \* asterisk"?

25 A. Yes.

1 Q. Was that asterisk included in Mr. Vetne's  
2 response -- or request, or was that something  
3 you added?

4 A. That was included in his request, I  
5 believe.

6 Q. Okay. Is there a difference in the  
7 treatment of milk diverted to nonpool plants  
8 under this Order if the nonpool plant -- if  
9 Plant A is a nonpool plant that is not a pool  
10 plant under the Federal Order and Plant B is a  
11 nonpool plant under another Federal Order?

12 A. There are differences on if it's diverted  
13 to another Order it could not be received as  
14 Class I in that other Order. It has to be  
15 requested Class IV, and then it would be -- move  
16 up as allocated, but --

17 Q. For instance, if it goes to a pool  
18 distributing plant, a plant that is known to be  
19 a pool distributing plant on another Order --

20 A. Yes.

21 Q. -- if it does that, then it cannot go as  
22 Class I?

23 A. Correct. It would have to meet producer  
24 milk with the other market.

25 Q. Are there other differences to such

1 treatment?

2 A. No.

3 Q. Under any of the proposals, if milk is  
4 diverted to such a plant is there any different  
5 treatment for coming back, if you know?

6 A. I am not sure.

7 MR. ENGLISH: That's all the  
8 questions I have at this time. Again, I thank  
9 you for -- in advance for undertaking to get me  
10 more information by the close of this hearing  
11 and I appreciate what you've done so far.

12 JUDGE DAVENPORT: Other examination?  
13 Mr. Vetne?

14 MR. VETNE: I'm John Vetne  
15 appearing on behalf of White Eagle and others.

16 CROSS-EXAMINATION

17 BY MR. VETNE:

18 Q. All right. I took some notes here in  
19 reverse order when you first answered some  
20 questions Mr. English asked.

21 A. Okay.

22 Q. Referring to Exhibit 11, Table 16(a) and  
23 the significance of the asterisk on 16(a), (b)  
24 and (c), we established that if milk is diverted  
25 to another Order plant it cannot come in as

1 Class I?

2 A. Correct.

3 Q. I think you responded or commented that it  
4 must be requested Class IV.

5 Is it not true that it can be requested to  
6 any available class at the receiving plant other  
7 than Class I?

8 A. Not on milk receipts, no.

9 Q. So if a plant has, say, 50 percent Class I  
10 and 50 percent Class II, at another Order  
11 distributing plant diversions cannot be made  
12 from producer milk of this Order to meet the  
13 Class II requirements of the receiving plant  
14 under other Order?

15 A. It would start in the allocation process in  
16 the Class IV first, yes.

17 Q. And then -- it would start in Class IV if  
18 there's Class IV?

19 A. Uh-huh.

20 Q. And then move to the other non-Class I  
21 classes, correct?

22 A. Yes.

23 Q. So it doesn't have to be Class IV?

24 A. No. If they don't have Class IV  
25 utilization, if they are Class II, it would move

1 to II.

2 Q. So it's basically requested non-Class I?

3 A. Yes.

4 Q. Okay. And a number of the plants that  
5 have -- that have asterisks as other Order  
6 plants, for example, Table 16(b) Dairy Farmers  
7 of America, Fond Du Lac, Wisconsin, some of the  
8 other Order plants are not distributing plants?

9 A. Correct.

10 Q. And if they're not distributing plants they  
11 have little, if any, Class I?

12 A. Probably not.

13 Q. Some of these plants are pool plants under  
14 other Orders by designation, for example, a  
15 cooperative association that qualifies a co-op  
16 plant?

17 A. Yes.

18 Q. Let me ask you, Table 16(a) the second  
19 page, about two-thirds of the way down, this is  
20 for -- Stockton Cheese, Inc., is mentioned  
21 twice, once with an asterisk and once without.

22 JUDGE DAVENPORT: It's actually the  
23 third page, isn't it?

24 MR. VETNE: It's the third  
25 page. Thank you. I'm going alphabetically to

1 "S."

2 THE WITNESS: Yes. That would be  
3 because they have a regulated and an unregulated  
4 side and so we do have shipments to both sides.

5 BY MR. VETNE:

6 Q. Okay. And Stockton Cheese under the  
7 asterisk side is regulated under some other  
8 Order?

9 A. I believe it's regulated under Order 30.

10 Q. Under the letter "L" on all three of these,  
11 in June of '04 where are diversions shown to the  
12 non-asterisk plants called Leprino Foods in  
13 both -- plants in Allendale and Remus, Michigan?

14 Leprino Foods does not show up in the  
15 December 2003 list of the plants to which milk  
16 was diverted and does not show up again for  
17 Remus in December 2004.

18 Do you know whether there was milk that was  
19 pooled that was received at those plants in some  
20 category as other than diverted milk?

21 A. In -- I'm sorry. I'm lost on where --

22 Q. Okay. December of 2003 under "L."

23 A. Okay.

24 Q. Leprino Foods in Allendale and Remus,  
25 Michigan doesn't show up. There's a cheese

1 plant in those locations, correct?

2 A. Correct. In those months they were  
3 regulated plants. In 2003 they were regulated  
4 on the Mideast Order.

5 Q. They were called a 7(e) plant having a  
6 marketing agreement with a cooperative?

7 A. That's correct.

8 Q. Okay. And then in June of 2004 Leprino  
9 shows up for both plants --

10 A. Yes.

11 Q. -- and that's because the designation of  
12 those plants as 7(d) plants was revoked by the  
13 stroke of a pen by those involved in that  
14 marketing agreement?

15 A. They chose not to pool them as pool plants,  
16 correct.

17 Q. And for December 2004, do we have the Remus  
18 plant coming back on as a 7(e) plant?

19 A. No, they were not.

20 Q. That plant stopped functioning?

21 A. I believe they were off line for a few  
22 months -- or for a few weeks and there was --  
23 there were no transfers to that plant in that  
24 month.

25 Q. At the current time is -- are the Remus and

1 Allendale plants still functioning as cheese  
2 plants, to your knowledge?

3 A. Yes, but they are not regulated in the  
4 Mideast Order, though, at this time.

5 Q. On that question, the 7(e) section is --  
6 provides for grandfathering plants that perform  
7 as supply plants that no longer qualify as pool  
8 supply plants if they have a marketing  
9 agreement?

10 A. Yes.

11 Q. Once those plants have been removed from  
12 the Order, may they come back as 7(e) pool  
13 plants by a marketing agreement?

14 A. I believe they have to qualify for 12  
15 months as a supply plant before they can come on  
16 as a 7(e). I would have to look at that  
17 regulation.

18 Q. They would qualify separately as a supply  
19 plant based on --

20 A. Yes.

21 Q. -- plant performance for 12 months?

22 A. I believe that's what it is, yes.

23 Q. Turning -- again, on Exhibit 11, Table  
24 8(a), I had a question there. I'm just going to  
25 ask some questions to distinguish this map from

1 the map in Exhibit 7.

2 And the total producer milk pounds,  
3 Mr. English said and you agreed, was the total  
4 milk associated with those distributing plants?

5 A. Yes. Plant producer milk pooled received  
6 at those plants.

7 Q. Okay. That was my question. In my mind,  
8 "associated" could be more than simply received  
9 at those plants. It included just physical  
10 receipts of those plants?

11 A. Yes, milk delivered.

12 Q. And not in diverted milk associated with  
13 those plants or cooperative milk that's  
14 qualified by delivery to those plants?

15 A. Correct.

16 Q. It's actual deliveries. So the non-Class I  
17 use for plants in that part of -- well, in  
18 Northern Ohio would be the difference between 92  
19 million and 86.5 million?

20 A. Yes, in total.

21 Q. And turning -- again, I'm looking at my  
22 notes from Mr. English's examination. In  
23 Exhibit 7 now, Request Number 2, he was looking  
24 at this exhibit in which Mr. English asked you a  
25 series of stroke of the pen questions referring

1 to milk -- the difference between, for example,  
2 February 2004 and March 2004 for Wisconsin 277  
3 million pounds versus 82 million pounds.

4 A. Uh-huh.

5 Q. Do you recall that?

6 A. Yes.

7 Q. And the question was to the effect that the  
8 difference between that two -- they would be  
9 removed from the Order and placed back on the  
10 Order with the stroke of a pen, correct?

11 A. Yes. They could choose to pool or not pool  
12 if it's received at nonpool plants.

13 Q. And in either case, that milk stays in  
14 Wisconsin?

15 A. It could, or it could be delivered to  
16 plants located in the Order area.

17 Q. Okay. Your response to the stroke of the  
18 pen question, Mr. English referred only to the  
19 State of Wisconsin with respect to that  
20 question.

21 Is it not true that the stroke of the pen  
22 question and answer applies to every state that  
23 has milk pooled in the Order 33?

24 A. Any milk that is delivered to nonpooled  
25 plants they have the option of pooling

1 regardless of where it's located.

2 Q. And even with respect to, for example, milk  
3 delivered to a pool plant, with the stroke of a  
4 pen a 7(d) cooperative plant or 7(e) marketing  
5 agreement cooperative plant can be taken off the  
6 pool and that milk then becomes -- that plant  
7 then becomes a nonpool plant to which milk can  
8 be -- milk can be non-diverted. Milk could be  
9 shipped without including it in the handler  
10 report?

11 A. Correct. If they request to or basically  
12 don't file the pool plant report for that month  
13 they can request nonpooled status.

14 Q. And in exhibit -- in the same exhibit,  
15 Request Number 2, you provide estimated impact  
16 of distant milk on -- pooled on Mideast Order,  
17 and I think at one point in response to a  
18 question by Mr. English you used the phrase  
19 "This is milk that we consider distant milk."

20 A. Not that we consider distant milk. That  
21 was considered distant milk in the request.

22 Q. So this is not a judgment --

23 A. No, it's not.

24 Q. Your prior testimony was not intended to  
25 represent a judgment by the Market

1 Administrator's office?

2 A. No, it was not. If I said that -- it was  
3 milk that per the request they asked that we  
4 consider the impact on the producer price  
5 differential.

6 Q. From that area?

7 A. From those five states, yes.

8 Q. And in preparing this table, you made no  
9 judgment one way or the other whether the  
10 exclusion of milk from New York or Eastern  
11 Pennsylvania or Vermont -- well, Vermont was  
12 included, but New York, which is just as distant  
13 as Ohio and Wisconsin, you make no judgment as  
14 to whether that is distant milk or not distant  
15 milk?

16 A. No.

17 Q. I'm still on Exhibit 7, Request Number 2.  
18 There was also some discussion with respect to  
19 that of reduced pounds during some month as  
20 representing touch base milk. Do you recall  
21 that dialogue with Mr. English?

22 A. I said that it could represent touch base  
23 milk. Those were touch base months.

24 Q. Okay. You did not mean to testify or imply  
25 that those volumes represent only touch base

1 milk?

2 A. No, did I not.

3 Q. And, in fact, it could be touch base milk,  
4 it could be a commitment to a contract or  
5 supply, any number of reasons why milk would  
6 stay in the pool --

7 A. Sure.

8 Q. -- originating from Wisconsin?

9 A. Yes.

10 Q. We also refer to touch base milk to the  
11 extent it might apply here or any place as a  
12 one-day requirement?

13 A. It depends on the month. During the months  
14 of August through November there is a two-day  
15 requirement.

16 Q. And for many producers, isn't that the  
17 case, that that would be one day's -- one  
18 pickup?

19 A. It could if there are two -- you know,  
20 every other day pickup.

21 Q. Isn't it true that a lot of producers,  
22 smaller producers in the market store their milk  
23 and have it picked up every other day?

24 A. Yes. I'm -- there are a lot of them that  
25 do.

1 Q. So even if -- even for a one-day touch base  
2 requirement, for a lot of producers it's  
3 actually a two day's production?

4 A. It could be, yes.

5 Q. It would be for those producers who have  
6 every other day pickup?

7 A. Yes.

8 Q. Okay. I'm on my notes from Mr. Beshore.  
9 Exhibit 11, Table 5. I have some questions  
10 about both Table 5 and Table 3, so I'm going to  
11 go back and forth a little bit.

12 Table 5 is an aggregate of all distributing  
13 plants in the -- pool distributing plants in the  
14 market that have any producer of milk which the  
15 handler includes in a report as the reporting  
16 handler?

17 A. Yes.

18 Q. So it would include handlers, for example,  
19 that have a hundred percent of what we call  
20 patron milk?

21 A. (Witness nodding head up and down.)

22 Q. And it would include milk of handlers that  
23 have 2 percent of the receipts of patron milk?

24 A. Yes. Most are the handler for their --  
25 their receipts are for the total amount, though.

1 Q. Okay. If a handler has a split kind of  
2 supply, some patron milk and some 9(c) milk, the  
3 handler may divert under Section 13 only a  
4 percentage based on what that handler reports as  
5 its own patron milk, right?

6 A. That is correct.

7 Q. And the 9(c) handler is eligible to make  
8 diversions or qualify on the balance that it  
9 supplies?

10 A. Yes.

11 Q. Now, looking at Table 3 for December 2003,  
12 patron producers. Again the 61.69 shows up on  
13 this table as well as Table 5.

14 A. Yes.

15 Q. Okay. And you referred to 61.69 on Table 3  
16 at one point as being a percentage number. It  
17 is a pound number, million pounds number,  
18 correct?

19 A. Yes, it is. The percent is in parentheses  
20 next to it.

21 Q. And the percent is -- and that's a  
22 percentage of all producer receipts?

23 A. All producer receipts at distributing  
24 plants.

25 Q. Of all distributing plants?

1 A. Yes.

2 Q. So of all those receipts, 9 percent is  
3 patron milk?

4 A. Yes.

5 Q. Okay. The other source bulk milk receipts,  
6 other source milk can include processed milk of  
7 some kind, can it not?

8 A. No. It's basically the fluid milk -- I  
9 went by the fluid milk product definition which  
10 can include bulk concentrate, but other than  
11 that it's just bulk fluid milk.

12 Q. And that was my question. The other source  
13 bulk milk includes condensed?

14 A. Yes.

15 Q. And condensed and producer milk diverted  
16 from another Order?

17 A. Correct.

18 Q. And it might also include, if there is any,  
19 milk from producers not qualified, it's not a  
20 pool producer?

21 A. Yes, but you wouldn't get any of that into  
22 distributing plants.

23 Q. Because there's a penalty involved?

24 A. Correct.

25 Q. And it could also include, but probably

1 doesn't, milk from unregulated supply plants?

2 A. It could.

3 Q. And that would be discouraged for the same  
4 reason, there's a financial disincentive?

5 A. They can receive milk from unregulated  
6 supply plants.

7 Q. There is -- there is an allocation that  
8 discourages that, however?

9 A. Yes.

10 Q. Okay. On to Exhibit 10. I think we were  
11 looking at Request Number 8 in Exhibit 10, and  
12 you had some discussion with Mr. Beshore about  
13 depooling Class III and Class II and Class IV  
14 milk. Do you recall some discussion?

15 A. Yes.

16 Q. Okay. Mr. Beshore asked you, I think, and  
17 you agreed, if my memory's correct, that Class  
18 II and Class IV milk when received by a 9(d)  
19 cooperative plant is automatically included in  
20 the pool?

21 A. Yes. If they're a regulated plant it would  
22 be.

23 Q. They can't be depooled?

24 A. No.

25 Q. It is nevertheless, as we discussed

1 earlier, a function of a stroke of the pen for  
2 the cooperative in any given month not to  
3 allow -- not to make its own plant, it's own  
4 plant as a cooperative?

5 A. Yes, if they elect not to pool.

6 Q. There is no -- there is no 12-month period  
7 in which a cooperative plant has to qualify on  
8 its own merits like there is for a non -- a 7(e)  
9 plant?

10 A. No, there's not.

11 Q. Let's see. Exhibit 7, Request Number 19.  
12 You testified that the line 5 item there, Class  
13 I Utilization at Plant of Receipt right across  
14 the board was 87.52 percent?

15 A. Yes.

16 Q. Which was just a number you chose for  
17 illustration?

18 A. Right.

19 Q. Is it also a number that fairly reflects  
20 the average -- an average Class I utilization as  
21 a distributing plant in the market?

22 A. That I'm not sure, if that's -- how close  
23 to the average that is.

24 Q. Okay. It is a number that could -- it is a  
25 Class I use that exceeds some distributing

1 plants in the market?

2 A. Yes.

3 Q. And it's less than other distributing  
4 plants?

5 A. Yes.

6 Q. I'm looking at Exhibit 7 Request Number 2.  
7 According to my notes, Mr. Beshore asked you  
8 some of the same questions about touch base milk  
9 that Mr. English asked and whether the shipments  
10 from Wisconsin were touch base milk. And the  
11 impression that I was left with was that that's  
12 what they were.

13 Again, I'll ask the same question. This  
14 milk could be touch base milk, it could be  
15 regular shipments, it can be fulfilling a  
16 contract, it could be a number of things in  
17 addition to touch base?

18 A. Yes. Yes, definitely. I did not mean to  
19 imply that it was definitely touch base milk.

20 Q. And on this exhibit also you make no  
21 judgment as to what is distant and what's not  
22 distant. You simply adopted the requestor's  
23 definition of distant?

24 A. Exactly. Just as we were requested to  
25 include those states.

- 1 Q. Okay. The impact on the PPD of milk in  
2 these particular states is also affected, is it  
3 not, by the zone out in PPD or blend price --
- 4 A. Yes.
- 5 Q. -- received by producers in those states?
- 6 A. Yes.
- 7 Q. So milk used -- whether diverted or to a  
8 co-op plant or whatever, milk used to produce  
9 cheese in Ohio or Michigan has -- for an  
10 equivalent amount, has a greater negative effect  
11 on the PPD than the same amount of milk used to  
12 produce cheese in Wisconsin, because the  
13 producer in Wisconsin is eligible for a lower  
14 draw?
- 15 A. Depending on which way the prices are, yes.
- 16 Q. In the ordinary month, Class IV is lower,  
17 Class III and Class II and Class I. The  
18 producer in Wisconsin is eligible to receive a  
19 smaller share of the revenue pool per hundred  
20 pounds than a producer delivering to a cheese  
21 plant in Ohio or New York?
- 22 A. The location adjustment will be a greater  
23 negative.
- 24 Q. Yes.
- 25 A. The further away, yes.

1 Q. Right. And the location adjustment applies  
2 not only to Class I milk, but to the price the  
3 producer received?

4 A. Right.

5 Q. The producer shares the pool?

6 A. Right.

7 Q. And the pool is a revenue pool?

8 A. Yes.

9 Q. It's the aggregate of all money?

10 A. Uh-huh.

11 Q. And a producer's share gets less of the  
12 pie?

13 A. Uh-huh.

14 Q. So for a hundred pounds of milk going for  
15 cheese in Wisconsin, or Minnesota for that  
16 matter, the producer receives a smaller piece of  
17 the pie than a hundred pounds of cheese going to  
18 an Ohio cheese plant or a New York cheese plant?

19 A. Yes.

20 Q. And that fact is also a component of  
21 Exhibit 7, Request 2 responses, the lower PPD  
22 for producers in Wisconsin, or Iowa or Illinois?

23 A. Well, it's just showing the -- the amount  
24 that removing these states has on the PPD. It's  
25 not taking the other states into account.

1 Q. I know. The calculation of those amounts  
2 use numbers in which that PPD that is removed is  
3 a lower PPD than, say, you would move an  
4 equivalent amount of New York or Ohio or  
5 Pennsylvania?

6 A. I would imagine because the differentials  
7 are lower.

8 Q. Exhibit 7, Request 11. The high, low and  
9 average for distributing plants represents  
10 diverted milk of distributing plants that report  
11 on paper milk. Reported it on Exhibit 11, Table  
12 5?

13 A. Yes.

14 Q. And the cooperative association diverted  
15 percentages do not include as part of the  
16 diverted volume or the percentage derived from  
17 the diverted volume that you have here, it does  
18 not include milk going to -- for manufacturing  
19 to a cooperative 9(d) plant?

20 A. No, because it only looks at diversions to  
21 non-regulated plants.

22 Q. So even though it has the same use, in some  
23 plants milk used to produce butter and powder  
24 and cheese is called a diversion, and in other  
25 cases it's called a pool plant receipt?

1 A. It could be diverted either way, but, yeah,  
2 to a pool plant or nonpool plant, yes.

3 Q. But it's not -- it doesn't -- it's not  
4 called a diversion for Section 13 purposes if  
5 it's received by a cooperative 7(d) plant?

6 A. Right. It's not called a diversion to a  
7 nonpool plant.

8 Q. Right. It's not called a diversion at all.  
9 It's called a receipt by pool plant?

10 A. Correct.

11 Q. And the same is true for a 7(e) plant such  
12 as Leprino would be?

13 A. Right.

14 Q. Now, the Market Administrator posts on its  
15 website annual data similar to that in Exhibit 7  
16 for prior periods?

17 A. Exhibit 6, the statistical handout, is that  
18 what you're referring to?

19 Q. Exhibit 6, yes.

20 A. Okay. Yes.

21 Q. And the material posted there is for two  
22 year periods, 2001 to 2003, 2003 and '4 and so  
23 forth?

24 A. Yes.

25 Q. And also included on the Market

1 Administrator's website is an icon where you can  
2 get the plant map and plant list?

3 A. Yes.

4 MR. VETNE: I think this would  
5 be a good time, Your Honor, to request official  
6 notice on the statistical reports and the last  
7 statistical reports on the Market  
8 Administrator's website, which are identical in  
9 form, virtually identical in form to Exhibit 6,  
10 but relate to prior years, as well as the list  
11 of regulated handlers and plants that are on the  
12 website and the Market Administrator's monthly  
13 pool, those three items.

14 JUDGE DAVENPORT: Are you asking me  
15 to take notice of specific or of the entire  
16 website?

17 MR. VETNE: Well, I -- I think  
18 we may get some hair pulling if we take notice  
19 of the entire website. I'm asking for the  
20 specific items; the monthly bulletins from 2000  
21 forward, the annual statistical compilations and  
22 the handler plant list and maps.

23 JUDGE DAVENPORT: Well, obviously  
24 those are in the public domain and certainly are  
25 part of the Department of Agriculture

1 publication. You can make reference to them.

2 MR. VETNE: The notice is  
3 taken.

4 JUDGE DAVENPORT: Excuse me?

5 MR. BESHORE: May I inquire? Did  
6 I understand the request to include the content  
7 of every monthly bulletin?

8 JUDGE DAVENPORT: Well, I guess what  
9 my question is is how do I make this manageable?  
10 And, in other words, if you're asking me to take  
11 notice of the specific piece of data, certainly  
12 I can do that. But, in other words, if the  
13 request, on the other hand, is enormous and  
14 encompasses the entire website, then obviously I  
15 don't see that that's manageable.

16 MR. VETNE: It doesn't  
17 encompass the entire website. It encompasses --

18 JUDGE DAVENPORT: Mr. Vetne, what I'm  
19 asking you to do is to identify those elements  
20 and that particular data which you wish to have  
21 included in this transcript.

22 MR. VETNE: All of the data.

23 JUDGE DAVENPORT: Are you prepared to  
24 produce it at this time from the website?

25 MR. VETNE: Well, the -- the

1 data is --

2 JUDGE DAVENPORT: No, answer my  
3 question. My question is: Do you have that  
4 data that you wish to provide at this time so  
5 that we can include it in the transcript?

6 MR. VETNE: I suppose I can  
7 provide a disk and copy it off the website or  
8 produce the pages. Typically what we've done in  
9 prior hearings was to take official notice of  
10 that which is accessible to everybody on the  
11 USDA websites for briefing purposes such as the  
12 prior statistical data such as the federal milk  
13 Order statistics that are published.

14 JUDGE DAVENPORT: I'm not saying that  
15 you can't include it in your brief. I'm talking  
16 about here in this hearing.

17 MR. VETNE: I don't intend to  
18 produce a paper copy of it. I'm requesting  
19 official notice so that I can refer to that data  
20 in my brief.

21 JUDGE DAVENPORT: If what you're  
22 doing is referring to data which is applicable  
23 only to the Administrator or the Secretary, then  
24 you may do so.

25 MR. VETNE: Thank you. Now,

1 with that background, one of the items to which  
2 my request referred was a list of pool plants  
3 for May of 2004. And I don't have a copy. I'll  
4 just ask her to refer to it.

5 MR. BESHORE: Copies for us?

6 MR. VETNE: I only have one  
7 copy. You can all look at it.

8 JUDGE DAVENPORT: Mr. Vetne, why  
9 don't you do this. Why don't you at least  
10 prepare four or the five copies which are  
11 normally produced at these hearings, in other  
12 words, we're pretty close to the lunch period  
13 and maybe with everyone else's acquiescence we  
14 can break for lunch at this time. I guess I'll  
15 entertain questions as to how long we need to  
16 recess for the lunch period because there's no  
17 lunch facilities on this particular site, and  
18 then at that point we would be in a better  
19 position to proceed this afternoon.

20 MR. VETNE: Okay.

21 JUDGE DAVENPORT: Gentlemen, how  
22 long -- and ladies, how long do you think we  
23 need for lunch?

24 MR. BESHORE: 1:00.

25 JUDGE DAVENPORT: Very well. Any

1 other comments? If there's no objection, we'll  
2 be in recess until 1:00.

3 (Thereupon, a luncheon recess was  
4 taken at 11:38 a.m., with the  
5 proceedings to be continued at 1:00  
6 p.m.)

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1                                   AFTERNOON SESSION

2   1:01 p.m.

3                           JUDGE DAVENPORT:  If we could, let's  
4 get started again.  Mr. Vetne is not here, but  
5 in the interests of time and just trying to stay  
6 on schedule, what I think I'll do is I will  
7 entertain other cross-examination at this time  
8 of Ms. Uther.  Do we have other counsel that  
9 are -- yes, sir.

10                           MR. ENGLISH:           Charles English,  
11 again, for Dean Foods.

12   FURTHER CROSS-EXAMINATION

13 BY MR. ENGLISH:

14 Q.       A couple questions about current  
15 situations.  For the month of February we have  
16 an announcement for the Class III price that  
17 came out last Friday, correct?

18 A.    Yes.

19 Q.    And that was what, 14.30?

20 A.    I believe so.  I'm not even -- I was so  
21 busy working on these other things I'm not even  
22 familiar with what it was.

23 Q.    Has there been any discussion in your  
24 office that the Class III price prepared for a  
25 Class I mover that was announced for the month

1 of February are such that we might expect  
2 depooling in the month of February?

3 A. We could with some other further distances  
4 with the estimate of the PPD that we have.

5 Q. We certainly have the same kind of economic  
6 situation showing up for February that might  
7 suggest the economic incentive is there for  
8 depooling for the month of February, correct?

9 A. That's possible, yes.

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

12 JUDGE DAVENPORT: Yes, sir?

13 MR. SCHAD: Good afternoon. My  
14 name is Dennis Schad, S-c-h-a-d, representing  
15 Land O'Lakes.

16 CROSS-EXAMINATION

17 BY MR. SCHAD:

18 Q. And, Sharon, I only have a couple  
19 questions.

20 A. Okay.

21 Q. First, and I'm referring to Exhibit 7, you  
22 referred to pounds depooled and you give  
23 estimates of those volumes. I'm looking at  
24 Request Number 5.

25 A. Okay.

1 Q. Could you tell us how you came about those  
2 numbers?

3 A. Okay. We receive payroll information from  
4 the different handlers, and from that we're able  
5 to determine how much milk was pooled versus  
6 their total payroll. And so most handlers  
7 supply us with information of milk that they  
8 would normally pool, but didn't choose to pool  
9 that milk.

10 Q. The second question is: Request Number 4,  
11 could you explain this request, please?

12 A. Number 4?

13 Q. Yes. Request Number 4 for Exhibit 7.

14 A. Okay. The monthly change in the Mideast  
15 producer receipts. The pounds of receipts are  
16 the total pooled, plus any depool to show what  
17 the total producer receipts for the market would  
18 have been and just a comparison to the prior  
19 month. The percentages are applying the change  
20 in producer receipts from the prior month and  
21 then that's an increase.

22 Q. And these are aggregate numbers? They  
23 don't represent any handler that may or may not  
24 have been over the 115 percent that's referenced  
25 in Proposal 7?

1 A. Right. It's an aggregate number in total.

2 MR. SCHAD: Thank you.

3 JUDGE DAVENPORT: We want to make  
4 sure the court reporter has your name. Just as  
5 a general comment, some of the people here have  
6 indicated during the break that some people are  
7 having a hard time hearing, so I'm going to try  
8 and keep my voice up. I hope all the witnesses  
9 will try to do the same so that everybody can  
10 keep track of exactly what is being said.

11 Are there other questions for the  
12 witness? Yes, sir?

13 MR. MILTNER: Brian Miltner for  
14 Continental Dairy Products.

15 CROSS-EXAMINATION

16 BY MR. MILTNER:

17 Q. I want to thank you for putting together  
18 the information for us --

19 A. You're welcome.

20 Q. -- which has been marked as Exhibit 10.  
21 And I have a couple of questions about Request  
22 Number 8 and Request Number 9. Mr. Beshore and  
23 Mr. English had asked you some questions about  
24 the distant milk from Wisconsin in -- I believe  
25 they were talking about July of 2003 and perhaps

1 April of 2004.

2 And is the -- the fluctuations in milk from  
3 Wisconsin, we've established that that's due in  
4 part to depooling. That's accurate?

5 A. Well, you could assume that based on the  
6 fact that there was depooled milk in those  
7 months.

8 Q. Okay. And those amounts would be reflected  
9 in the total amount of milk depooled that your  
10 office has indicated here on Request Number 8;  
11 is that --

12 A. Right. But those could be from any  
13 location, but that's the pool.

14 Q. And if you look at the Class III pounds  
15 depooled for July of 2003, I believe that 417  
16 million pounds --

17 A. Yes.

18 Q. -- roughly? And that correlates on Request  
19 Number 9, the following page, with the roughly  
20 420 million pounds that you've assumed depooled  
21 in that calculation, right?

22 A. Yes.

23 Q. Okay. And just so -- I know that when your  
24 office prepared this, I walked through with  
25 Mr. Huber, I don't know if he was putting this

1 together, but so the record shows, let's talk  
2 about what these numbers represent here, if we  
3 could.

4 A. Okay.

5 Q. Looking at July 2003, the 420 million  
6 pounds depooled would have resulted in an  
7 estimated PPD of a negative \$0.10, right?

8 That's what this reflects?

9 A. Yes.

10 Q. Okay. Now, if we had pooled all of that  
11 milk --

12 A. Uh-huh.

13 Q. -- we would have a negative PPD of \$0.03,  
14 correct?

15 A. That is correct.

16 Q. Okay. And then Proposal 5, which  
17 Continental is the proponent of, would require  
18 that once milk is depooled it would stay out of  
19 the pool for 12 months, correct?

20 A. Correct.

21 Q. And so once that 420 million pounds of milk  
22 is removed from the pool, Request Number 9  
23 assumes that that remains out of the pool,  
24 right?

25 A. Yes.

1 Q. So for -- let's move forward to November  
2 2003. Okay?

3 A. Uh-huh.

4 Q. Fully pooled, we had -- your office  
5 estimated a PPD of a positive \$0.46.

6 A. Yes.

7 Q. And in that situation, we wouldn't expect  
8 to have depooling, right?

9 A. Correct.

10 Q. Okay. But if we kept that 420 million  
11 pounds out of the pool, the PPD would have  
12 increased by \$0.10, right? That's what this is  
13 reflecting?

14 A. Yes.

15 Q. Okay. And so the same analysis, the same  
16 logic, in April and May of 2004, is that --  
17 that's correct?

18 A. Yes.

19 Q. And you've done the same type of  
20 calculation there?

21 A. Yes.

22 Q. That we have 450 million pounds now out of  
23 the pool, and then in June of 2004 the normal --  
24 the normal, I guess, analysis that a handler  
25 would make is that you would want to be pooled

1 in June with a positive PPD, right?

2 A. Correct.

3 Q. But if you -- if they made the decision to  
4 depool, they were kept out of the market, in  
5 fact, the remaining producers would see an  
6 increased PPD, an increase of \$0.61, according  
7 to your estimates, right?

8 A. Yes.

9 Q. And just so the record's clear, that's how  
10 this chart should be read. That's what this  
11 chart indicates?

12 A. Yes.

13 MR. MILTNER: I don't have  
14 anything else. Thank you.

15 JUDGE DAVENPORT: Thank you. I saw  
16 Mr. Vetne was here, but has left again. Are  
17 there other witnesses -- or other counsel that  
18 would like to examine?

19 MR. RICCIARDI: I'm Al Ricciardi on  
20 behalf of Sarah Farms.

21 CROSS-EXAMINATION

22 BY MR. RICCIARDI:

23 Q. Good afternoon.

24 A. Good afternoon.

25 Q. I have some questions based on some of the

1 exhibits. Let's start with Exhibit Number 6,  
2 which is the compilation of statistical data  
3 that was prepared by the Market Administrator's  
4 office from its own information and these  
5 questions are more in the nature of  
6 clarification.

7 If you would, turn to Table 8 for a moment?

8 A. (Witness complies with the request.)

9 Q. That is headed "Receipts At Pool Plants,"  
10 correct?

11 A. Yes.

12 Q. I notice that you have in the third column  
13 from the left producer-handler and unregulated  
14 handlers, correct?

15 A. Yes. It would be unregulated sources of  
16 receipts.

17 Q. Okay. And this is, again, in the nature of  
18 clarification, that goes to your footnote.

19 There are certain months both in 2003 and 2004 I  
20 notice with two asterisks and at the bottom it  
21 says "Restricted included with Non-Pool Plants."  
22 Can you explain what that means, please?

23 A. That would mean that there were less than  
24 three handlers with those type of receipts, so  
25 that it would be restricted and included within

1 the nonpool plant number.

2 Q. Okay. So that the pounds of milk then for  
3 the producer-handler and unregulated sources for  
4 those months with asterisks, but actually we go  
5 over to the left-hand column and look at the  
6 nonpool plants and it would be included there?

7 A. Correct.

8 Q. Okay. Thank you. Next in Exhibit Number 6  
9 if you would turn to Table 13 for a moment?

10 A. (Witness complies with the request.)

11 Q. This is headed "Route Sales Within  
12 Marketing Area." And, again, the third column  
13 over from the left indicates that you have  
14 producer-handler and exempt plants in that  
15 column, correct? I apologize. I got ahead of  
16 you.

17 A. It's producer-handler and exempt plants,  
18 yes.

19 Q. Okay. And the columns themselves are by  
20 pounds of milk, correct?

21 A. Thousands of pounds, yes.

22 Q. All right. And you would agree with me  
23 that with regard to at least the numbers for the  
24 year that the lowest number in terms of  
25 production of milk within your chart is the

1 producer-handler and exempt plants?

2 A. The lowest volume of route sales in the  
3 marketing area partially regulated had a  
4 comparable number, yes.

5 Q. Okay. I want to then turn, if you would,  
6 to Exhibit Number 7. This is the information  
7 that was requested by Dairy Farmers of America  
8 and Michigan Milk Producers Association,  
9 correct?

10 A. Yes.

11 Q. And what was your -- and I apologize if I'm  
12 going over old ground, but what was your  
13 specific role in compiling the information that  
14 went into Exhibit Number 7?

15 A. My personal role?

16 Q. Yes.

17 A. We worked together on several of these --  
18 or on all of the tables in the office. I, along  
19 with other employees in the office.

20 Q. Okay. So everybody within the office sort  
21 of contributed to the information that was  
22 placed into these exhibits?

23 A. Well, there were several of us that did,  
24 yes.

25 Q. Okay. And you were one of those?

1 A. And I was one of them.

2 Q. I got it. Okay. My first question on  
3 Exhibit Number 7 has to do with the information  
4 that is in Request Number 1(a). And as I  
5 understand it, the information contained in that  
6 Request Number 1(a) for Exhibit Number 7  
7 includes Mideast producer milk by states during  
8 the period of time 2000 through 2004?

9 A. Yes.

10 Q. And are we -- am I to assume correctly that  
11 if there's no state represented here in these  
12 charts 1(a), that no milk came into Order 33  
13 from that state?

14 A. Correct. Or if it were a small amount it  
15 would be footnoted and included with another  
16 state.

17 Q. Okay. So, for example, I don't see Arizona  
18 represented. Does that mean that there was no  
19 milk that came from Arizona during this period  
20 of time?

21 A. That's correct.

22 Q. Okay. Good enough. If you would, same  
23 exhibit, Number 7, this time I want to turn to  
24 Number 20 for a moment. The heading for Request  
25 Number 20 is "Recap of Plant Data for Mideast

1 Producer Handlers and Pool Distributing Plants"

2 for October of 2004. Is that correct?

3 A. Yes.

4 Q. Now, is that only that particular month, or

5 is that the information for the entire year

6 through October 2004?

7 A. That is for only that particular month.

8 Q. Okay. So if I look at the two columns,

9 what that tells us is that there were, in

10 October of 2004, 12 producer-handlers as opposed

11 to 41 7(a) distributing plants. Am I reading

12 that correctly?

13 A. Yes.

14 Q. And with regard to the percentage of Class

15 I milk that was produced by producer-handlers in

16 that particular month, October of 2004, it would

17 be less than 1 percent?

18 A. Yes.

19 Q. Whereas the 7(a) distributing plants is

20 close to 90 percent?

21 A. Yes.

22 Q. Let me ask you a question. That -- you

23 know, in my rough math that 90 plus percent,

24 there's obviously a missing percentage of

25 Class I milk. It would be with regard to

1 partially regulated plants?

2 A. Yes. It could be any other sources that  
3 might have had Class I sales in the market, the  
4 other Order sales into our market.

5 Q. Did you look at the data for other months  
6 in 2004?

7 A. No. October is what was requested and  
8 that's what we submitted.

9 Q. Do you have enough information to tell me  
10 whether this would be representative of the  
11 entirety of 2004 if I asked you to pick any  
12 other month during that period of time?

13 A. It's representative, yes.

14 Q. Okay. Thanks. I now want to turn to  
15 Exhibit Number 10, and specifically Request  
16 Numbers 3, 4 and 5.

17 The heading would be "Producer-Handler  
18 Summary for Mideast Marketing Area and  
19 Predecessor Orders." Do you have that page?

20 A. Yes.

21 Q. Now, as I understand the chart, and you'll  
22 correct me where I'm wrong, basically what this  
23 shows us is as of December of each one of the  
24 years, the number of plants that were  
25 producer-handlers and the total Class I

1 disposition for those producer-handlers during  
2 that year?

3 A. It's actually for the month of December.

4 Q. Does the month of December include total  
5 year information, or is that only for that  
6 particular month?

7 A. It's only for that particular month.

8 Q. Okay. Do you agree with me that simply by  
9 reading the numbers on this particular page that  
10 in '75 we had 91 producer-handlers and in 2004,  
11 13?

12 A. Correct.

13 Q. So in general, the number of  
14 producer-handlers has decreased from '75 to  
15 2004?

16 A. Yes.

17 Q. And although taking the last -- December of  
18 2003 and December of 2004, we do have an  
19 increase between 2003 and 2004 of three  
20 producer-handlers, but a decrease in the total  
21 Class I disposition of those producer-handlers,  
22 correct?

23 A. Yes.

24 Q. Okay. If you would, the same exhibit,  
25 Number 7 this time.

1 JUDGE DAVENPORT: Request Number 7?

2 MR. RICCIARDI: Request Number 7,

3 yes. Thanks very much.

4 BY MR. RICCIARDI:

5 Q. This one is "Impact on Producer Price

6 Differential if Producer-Handler Route

7 Dispositions were Included in Pool Calculation."

8 Again, I just want to make sure I'm reading this

9 correctly.

10 For December of 2001, December of 2002,

11 December of 2003 and December of 2004, if you

12 included the route dispositions of

13 producer-handlers in the producer pool for

14 producer price differential, you would not

15 change either the percentage or the dollar

16 figure at all, correct?

17 A. It would be so insignificant that it would

18 not change the producer price differential.

19 Q. And you've listed on this chart zero?

20 A. Yes.

21 Q. Okay. Lastly, if you would look over to

22 Exhibit Number 11, please, and I'm going to

23 direct your attention to Table 16(a) through

24 16(c) -- and Exhibit 11, as I understand it, is

25 information that was requested by White Eagle

1 Milk Marketing Federation, Family Dairies and  
2 others?

3 A. Yes.

4 Q. A couple of general questions. In terms of  
5 the selection of the month -- now as I  
6 understand the tables, it was December of '03  
7 and June and December of '04. Do you know why  
8 those particular months were selected?

9 A. No, I don't. You would have to ask those  
10 that requested it.

11 Q. And I will. Do you have any idea as to the  
12 importance of those three months as opposed to  
13 other months?

14 A. No, I don't.

15 Q. Okay. With regard to -- and this is headed  
16 Mideast Milk Order Nonpool Plants to which  
17 Producer Milk Was Diverted during those three  
18 months' period of time, correct?

19 A. Yes.

20 Q. Do you have any idea as to the reason for  
21 the diversion of the milk to nonpooled plants  
22 during those three months?

23 A. No, I don't know. I guess you would have  
24 to ask the plants that diverted.

25 Q. Okay. And I will. Thank you very much.

1 A. You're welcome.

2 JUDGE DAVENPORT: Others? Mr. Vetne,  
3 it looks like you're back up. Mr. Vetne, while  
4 you were out of the room I made the announcement  
5 that some people are having a hard time hearing,  
6 so if you would please keep your voice up so  
7 that everyone can hear what you are asking, and  
8 the witnesses, of course, have also been asked  
9 to do the same.

10 MR. VETNE: Thank you. I'll  
11 try. John Vetne again.

12 FURTHER CROSS-EXAMINATION

13 BY MR. VETNE:

14 Q. A couple of questions following  
15 Mr. Ricciardi. When you responded that there's  
16 no milk from Arizona or other states that are  
17 blank, that just means there's no producer milk?

18 A. Right, correct. No producer milk pooled.

19 Q. There may be milk coming in, other source  
20 milk, for example, or other milk coming into a  
21 manufacturing plant located in the Mideast  
22 that's not a pool plant?

23 A. It could be, but that table only referred  
24 to producer milk.

25 Q. And as to the months -- months of

1 diversions shown on Exhibit 17 and Table 16,  
2 May -- March, April and May were months in which  
3 there was quite a bit of milk that wasn't pooled  
4 in every state, correct?

5 A. Correct.

6 Q. And June was a month in which milk came  
7 back on? There wasn't much depooling in June?

8 A. Correct.

9 Q. And the same, there wasn't much depooling  
10 in the prior December of 2003?

11 A. Correct.

12 Q. Although there was some depooling  
13 apparently in December of 2004?

14 A. Yes, correct.

15 Q. On Exhibit 11, Table 20, in response to a  
16 question from Mr. Beshore, you indicated, if my  
17 notes are correct, that these are cooperative  
18 plants that have shipments to pool distributing  
19 plants. I'm going to ask you if you might be --  
20 might clarify that.

21 A. They qualified -- I don't recall saying  
22 that, but if I did, these are co-op plants that  
23 qualify based on the co-op deliveries in total.

24 Q. Okay. There would be no -- no requirement  
25 that any milk actually come from the plant to a

1 distributing plant, from these plants?

2 A. Not necessarily. It's the cooperative in  
3 total.

4 Q. Okay. So it's not indicative of shipments  
5 from these plants or no shipments from the  
6 plants?

7 A. Correct.

8 Q. On Table 17 of the same -- same exhibit,  
9 Exhibit 11, are the cooperatives that are  
10 grouped there, cooperatives that are listed in  
11 Table 1 of Exhibit 6, which are the cooperatives  
12 that qualified as pooling handlers in the  
13 market?

14 A. Yes, they would be, but the counts -- you  
15 know, per the footnote, "Milk included in a  
16 federated cooperative report is treated as milk  
17 reported by a single 9(c) handler." That's why  
18 you would not see the counts agree necessarily  
19 with the listing in that table.

20 Q. Okay. So of the cooperatives on the -- on  
21 Table 1 of Exhibit 6, several of these  
22 cooperatives combine to market their milk as  
23 federated --

24 A. Yes.

25 Q. -- with a single report?

1 A. Yes.

2 Q. Other than Dairy Marketing Services, LLC  
3 and White Eagle Milk Marketing Federation, which  
4 of these 9(c) cooperatives file a federated  
5 report, if any?

6 A. I -- I can't say that there are any others  
7 that do.

8 Q. Okay. In Exhibit, again, 11, Table 15,  
9 please tell me if my understanding is correct  
10 that all of the milk that would have been  
11 included under the column of Section 7(c) and  
12 (f) supply plants have been moved over to the  
13 right?

14 A. In the month of October through December  
15 2003 and August and September of 2004 they were  
16 included with the 7(d) and (e) plants.

17 Q. Okay. And on the other R-2 plants, all of  
18 the plant milk of cooperatives is generically  
19 under 9(c) handlers, whether they have plants or  
20 not?

21 A. Correct. Because there were no 7(c) in  
22 those plants, but the (d) and (e) were  
23 restricted and moved over to the 9(c).

24 Q. Okay. And on Tables 11, 12 and 14 you  
25 indicated that you made some assumptions about

1 the number of 9 -- you'll assume there was a  
2 Number 7 and referred to Section 7 rather than  
3 9?

4 A. Yes.

5 Q. Let me tell you that all of your  
6 assumptions were entirely accurate.

7 A. Okay.

8 Q. I just wish you had taken the liberty to  
9 change it rather than to make it public.

10 A. I'm sorry.

11 Q. But that's okay. Table 8. The table --  
12 the maps on Table 8 of producer milk to various  
13 distributing plant regions --

14 A. Yes.

15 Q. -- would that also include supply plant  
16 milk?

17 A. No, it would not, because it's producer  
18 milk delivered to distributing plants.

19 Q. Okay. Would it include producer -- would  
20 it include supply plant milk that is diverted  
21 directly from a farm to a distributing plant?

22 A. Only if it were producer milk at the  
23 distributing plants. If it were pooled as  
24 producer milk at those distributing plants when  
25 they picked it up. So if it were diverted from

1 another plant and producer milk on that plant,  
2 no, it would not be included.

3 Q. Okay. But if it were diverted, if a supply  
4 plant could do so, and I'm not sure in this  
5 period even if a supply plant could, but if a  
6 supply plant could divert milk from its supply  
7 plant and have it received at the point of first  
8 receipt as producer milk at a distributing  
9 plant, these would be included in these numbers?

10 A. No. I don't think it was included.

11 Q. Okay. I sense a little bit of maybe, maybe  
12 not. Can you confirm yes or no?

13 A. No. I -- it was not included. It was only  
14 producer milk pooled at those plants.

15 Q. Okay. So producer milk that was either  
16 marketed by 9(c) handlers directed to those  
17 plants or paper milk of those plants?

18 A. Right.

19 Q. And the 9(c) handlers would include those  
20 handlers that qualify 7(d) and 7(e) plants?

21 A. Yes.

22 Q. And on Table 7 under Indiana, the chart --  
23 the table that I prepared asked for a couple of  
24 plants clustered in northwestern Ohio to be  
25 included with Indiana, and I understand you did

1 not do so because you already prepared the DFA  
2 requests?

3 A. Yes, we have.

4 Q. And so you added that -- you added a  
5 footnote on the bottom of the page concerning  
6 that subject?

7 A. Yes.

8 Q. On Table 2 for December 2000 -- for  
9 December 2003, well, for all of them actually,  
10 the handler side range of 15 to 25 is respected,  
11 and I understand that all of those numbers have  
12 been moved down one row so that what's the third  
13 row represented as 5 to 15 is now actually 5-25?

14 A. No. Actually those were included in the  
15 less than 5 million range.

16 Q. Oh, less than 5 million?

17 A. Yes.

18 Q. Okay. So the last line then represents the  
19 smallest plants as well as the plants within the  
20 15 to 25 million pound range?

21 A. Correct.

22 Q. I've lost an exhibit here. There's one  
23 that showed ranges of diversions cooperative  
24 plants -- I'm sorry, cooperatives --  
25 cooperatives and patron milk, high, low,

1 average.

2 MR. VETNE: Can anybody help me  
3 find that one?

4 THE WITNESS: That shows the  
5 diversion ranges?

6 MR. VETNE: Yes.

7 MR. STEVENS: 7? 11?

8 MR. VETNE: Page -- Exhibit 7,  
9 Request Number 11.

10 THE WITNESS: Yes.

11 MR. VETNE: There we go.

12 BY MR. VETNE:

13 Q. I understand the high range and the low  
14 range are individual players?

15 A. Yes.

16 Q. Is the average a weighted average, or a  
17 simple arithmetic average of the individuals?

18 A. It's a weighted average of the individuals  
19 that did have diversions.

20 Q. Okay. Now, on that -- let's see. On that  
21 exhibit, also under the cooperatives, the low  
22 range, from January to May, it's roughly 5  
23 percent to 10 percent. And then in June it's --  
24 in June, July it's about 40 percent or  
25 thereabouts?

1                   JUDGE DAVENPORT:   Except for  
2   December.

3                   MR. VETNE:            Pardon?

4                   JUDGE DAVENPORT:   Except for  
5   December.

6                   MR. VETNE:            Except back to back  
7   in December, yes.

8   BY MR. VETNE:

9   Q.   The -- during the first couple of months of  
10   2004, the two Leprino plants were pool plants so  
11   that they would not have been considered -- milk  
12   going to those plants would not have been  
13   considered diversions?

14   A.   No, they would not be regulated.

15   Q.   And during March, April and May, the two  
16   Leprino plants were designated as nonpool  
17   plants?

18   A.   Yes.  After March they would have been  
19   nonpooled.

20   Q.   So that would have been depooled, depooled  
21   milk?

22   A.   It would not have been pooled going to pool  
23   plants.  If they pooled it, it would have been a  
24   nonpooled diversion.

25   Q.   Is there any economic reason not to -- is

1 there anything other than an economic reason for  
2 Class III milk by Leprino during those months?

3 A. The same economic reasons would exist to  
4 any cheese plant.

5 Q. Yes? And your aggregate -- your aggregate  
6 numbers for milk depooled, voluntarily depooled  
7 include Michigan milk going to cheese plants  
8 that have been pooled in the past; am I correct?

9 A. It would include any nonpooled diversions.

10 Q. And the increase in June, would that  
11 correspond with the time when the milk that  
12 previously had either been depooled or  
13 associated with the 7(e) pool plant came back on  
14 the market but this time came back as  
15 diversions?

16 A. I'm sorry. I'm not following your  
17 question.

18 Q. I'm looking at the increase from May to  
19 June. June is 40 percent?

20 A. Correct.

21 Q. Forty plus percent. Would you agree with  
22 me that a factor in that increase would be that  
23 the milk going to Leprino was back on the pool,  
24 whereas previously it had either been depooled  
25 or gone to the plant at -- not as a diversion,

1 but as a pooled delivery?

2 A. I can't say that Leprino specifically would  
3 have been back on, but any -- anyone that had  
4 not pooled due to pricing reasons when those  
5 prices changed, yes, they would come back.

6 Q. Okay.

7 MR. VETNE: Which leads me to  
8 the question I had as we broke for lunch. I  
9 managed to -- I couldn't find a color copier,  
10 but this -- I would like to have the original  
11 exhibit. I'll try to get some more colored  
12 ones, but I have five.

13 JUDGE DAVENPORT: We'll mark it for  
14 identification as Exhibit 12.

15 (Thereupon, Exhibit 12 of the Mideast  
16 Federal Milk Marketing Order hearing  
17 was marked for purposes of  
18 identification.)

19 BY MR. VETNE:

20 Q. What I've handed to you is from the Market  
21 Administrator's website, a list of pool plants  
22 for May of 2004. And the website information  
23 indicates three of those plants, the two Leprino  
24 plants in Michigan, and one DFA plant in red,  
25 and there's an explanation for that at the

1 bottom of the page that these plants were not  
2 pooled due to economic reasons.

3 Do you recognize that as your website  
4 material, or would you like to go to your  
5 website and then determine?

6 A. I do not recall seeing this on a specific  
7 document on our website. I know that we show  
8 pool plant lists for the current month.

9 Is this in conjunction with a map that is  
10 on our website?

11 Q. Yes. Click on pool plants and there's a  
12 map and a list together.

13 A. Okay. For the month of May?

14 Q. Yes.

15 A. As I recall the map, I don't recall this  
16 list.

17 Q. Nevertheless, is the -- to your knowledge,  
18 is the footnote at the bottom of that page from,  
19 which I represent is from your website, an  
20 accurate one that these three plants, the  
21 Leprino plants and the DFA plant, did not pool  
22 during the month of May for economic reasons?

23 A. If they were not pooled that month, I would  
24 say yes, but I believe Leprino had not been  
25 pooled previous to that, but they were probably

1 shown on the map because they had been in the  
2 year earlier, yes.

3 Q. And those economic reasons would be the  
4 same economic reasons that milk is depooled,  
5 which is represented in the Market  
6 Administrator's data of milk deemed by the  
7 Market Administrator to be voluntarily depooled  
8 for economic reasons?

9 A. Yes.

10 MR. VETNE: I ask that the  
11 exhibit be received.

12 JUDGE DAVENPORT: Objection?

13 MR. STEVENS: (Counsel shaking  
14 head from side to side.)

15 MR. BESHORE: I -- I have a  
16 problem with the exhibit in that, as I  
17 understand it, it is not a published list of  
18 pool plants for that month. Rather it is -- it  
19 is a function -- it's a depiction of plants that  
20 are, you know, identified with a map on the  
21 website and for whatever reasons, it lists some  
22 nonpooled plants and not others.

23 There are just a couple of nonpool  
24 plants, which is a very unusual assembly of  
25 plant listings among any Market Administrator

1 publication. So, you know, they've got a map on  
2 the website which is helpful for people to see  
3 and learn about, but I don't think the printout  
4 associated with the -- with the map is an  
5 official listing of pooled and nonpooled plants  
6 and that's what it's being offered for.

7 JUDGE DAVENPORT: To the extent that  
8 the listing was, in fact, published by the  
9 Department of Agriculture, it would be  
10 considered admissible. However, the  
11 Administrator may give it such weight as they  
12 desire.

13 MR. VETNE: Thank you, Your  
14 Honor. That's all I have.

15 JUDGE DAVENPORT: Are there other  
16 counsel that wish, or other representatives,  
17 that wish to examine this witness? Mr. Beshore,  
18 you have your finger up.

19 MR. BESHORE: Yes. I have one --  
20 one question or one area Ms. Uther.

21 FURTHER CROSS-EXAMINATION

22 BY MR. BESHORE:

23 Q. For clarification, hopefully in terms of  
24 some of the terminology that I've used with you  
25 and other questioners have used with you, when

1 you've used the term "touch base," that is not  
2 precisely defined in the Order, is it?

3 A. No, it's not.

4 Q. Okay. But would it be correct to say that  
5 when -- when the industries talk about touch  
6 base provisions in an Order, they are generally  
7 referring to the provisions of the producer milk  
8 definition in the Order which require specified  
9 quantities or daily increments of producer milk  
10 to be delivered to pool plants or type --  
11 certain types of pool plants, like pool  
12 distributing plants?

13 A. Yes.

14 Q. Okay. Now, when there was discussion of  
15 milk -- and touch base is usually one day's  
16 production per month, or two days' production  
17 per month or four days' production per month  
18 perhaps?

19 A. Yes.

20 Q. Okay. When the discussion with respect to  
21 milk from areas such as the states of Illinois  
22 or Minnesota or Wisconsin that was pooled on the  
23 market during months wherein most of the milk in  
24 those distant areas was depooled, if it was  
25 referred to as a touch base sort of thing, that

1 probably was not accurate. Is that fair?

2 A. Correct. It could have been. I did not  
3 mean to imply that it was.

4 Q. Okay. But a questioner might have said  
5 "touch base," like me, and that would not have  
6 been a correct description of what was going on  
7 there?

8 A. Not necessarily, no.

9 Q. Okay. But there is a one day's requirement  
10 in your Order language defining producer milk  
11 that might be called a minimum association  
12 requirement as opposed to a touch base  
13 requirement?

14 A. Yes. The milk is required to remain  
15 associated, and it's our interpretation that  
16 that is a one day's production.

17 Q. So that if a producer is to remain -- and  
18 the producer language in the Order requires that  
19 producers have continuous association with the  
20 Order in order to be relieved of the obligation  
21 of touching base continuously in some cases; is  
22 that correct?

23 A. To -- to have to go into a pool plant  
24 again, yes, they would have to remain  
25 continuously associated to avoid having to be

1 received at a pool plant before being diverted  
2 to an nonpool plant.

3 Q. So when the information in Exhibit 6 which  
4 states for the month of, let's say, April  
5 2004 -- and I don't have it in front of me, but  
6 I think in Exhibit 6 or perhaps Exhibit 7, where  
7 a number of -- where the number of producers and  
8 the pounds of milk in a state is identified  
9 both --

10 A. Yes.

11 Q. Okay -- - and you've got a depool month  
12 like April of 2004, you may see 500 or 700 or a  
13 thousand producers from the State of Wisconsin  
14 associated with the market?

15 A. Yes.

16 Q. Pooled on the market, correct?

17 A. Yes.

18 Q. But only a very small volume of milk,  
19 relatively speaking, pooled from that same  
20 source?

21 A. Yes. That's possible.

22 Q. Okay. And that reflects the need to  
23 continuously pool, regardless of the economics  
24 of pooling that month, at least one month's  
25 production -- or one day's production?

1 A. One day's production, yes.

2 Q. Have you ever heard that dynamics between  
3 touch base and continuous association or minimum  
4 association described in terms of for minimum  
5 association the milk just has to land on a  
6 report, and for touching base it's got to land  
7 on a plant?

8 A. I've not heard that.

9 Q. Would that be an accurate way of describing  
10 what goes on in those two situations?

11 A. Well, one day's production must be pooled  
12 to remain continuously associated.

13 Q. And to be pooled, it just has to be  
14 reported, be placed on a piece of paper that's  
15 the pool report?

16 A. Correct.

17 Q. Okay. Whereas to touch base, it has to be  
18 physically delivered to a pool plant?

19 A. Correct.

20 MR. BESHORE: Thank you.

21 JUDGE DAVENPORT: Other counsel or  
22 representatives? Very well, if there are none,  
23 Ms. Uther, you may step down.

24 THE WITNESS: Okay. Thank you.

25 JUDGE DAVENPORT: Gentlemen, I guess

1 at this time I would entertain a suggestion as  
2 to how to proceed next, particularly if there  
3 are individuals here who have scheduling  
4 constraints.

5 MR. BESHORE: We have a witness,  
6 Mr. Gallagher, who is a very long witness, our  
7 major witness for Proposals 1, 2, 7 and 9. I  
8 would suggest that we make time now for any  
9 individuals who may want to appear, shorter  
10 witnesses or whatever, before we begin with  
11 Mr. Gallagher.

12 Now, while he's involved, which is  
13 going to be a considerable period of time, we're  
14 willing, if it's required, to make  
15 accommodations for individuals as well, but if  
16 there are any now, I think it would be an  
17 appropriate time.

18 JUDGE DAVENPORT: Is there anyone now  
19 here in the audience that does need to address  
20 or make comments known at this time? Yes, sir.

21 MR. WOLFE: I'm here to  
22 represent Ohio Farmers Union.

23 (Thereupon, a discussion was held off  
24 the record.)

25 MR. WOLFE: Brian Wolfe,

1 W-o-l-f-e.

2 JUDGE DAVENPORT: And you want to be  
3 heard at this time?

4 MR. WOLFE: If you would like  
5 me to. I've got to be back home tonight.

6 JUDGE DAVENPORT: Sounds like you're  
7 one of the ones I was asking.

8 MR. WOLFE: You want me to come  
9 up now?

10 JUDGE DAVENPORT: Please. Mr. Wolfe,  
11 do you have a witness, or are you just going to  
12 make a statement? How is this going to proceed?

13 MR. WOLFE: Probably just a  
14 statement for the Farmers Union.

15 JUDGE DAVENPORT: Very well.  
16 Proceed.

17 MR. WOLFE: Who do I give these  
18 copies to?

19 JUDGE DAVENPORT: I guess  
20 procedurally, is this -- are the copies that you  
21 have related to what you're presenting in this  
22 statement?

23 MR. WOLFE: Yes.

24 JUDGE DAVENPORT: Very well. Why  
25 don't you give the copies then to the court

1 reporter you're going to make. I guess while  
2 you're over here you might as well step up here.

3 MR. WOLFE: Ready?

4 JUDGE DAVENPORT: Yes, sir.

5 MR. WOLFE: I'm here to  
6 represent Ohio Farmers Union. We appreciate the  
7 opportunity to contribute testimony to this  
8 important hearing dealing with Federal Order 33  
9 pooling rules. The Ohio Farmers Union firmly  
10 believes that permissive pooling rules have led  
11 to excessive levels of milk from distant regions  
12 being pooled in Order 33 during recent periods,  
13 a practice that has removed tens of millions of  
14 dollars from the traditional, geographic Order  
15 33 area.

16 We believe that these opportunistic  
17 transfers of milk have occurred not due to local  
18 milk shortages, but solely due to the desire of  
19 milk handlers to capitalize on excessively  
20 volatile and inappropriate class pricing  
21 variations, coupled with lax pool qualification  
22 criteria. These permissive pool qualification  
23 terms often allowed distant milk handlers to  
24 capture millions of dollars from the Federal  
25 Order 33 pool without actually shipping the milk

1 into the order on a daily basis.

2                   We understand that milk must  
3 periodically flow between various regions and  
4 Marketing Orders, but believe that such  
5 transfers should be driven by legitimate market  
6 dynamics and fundamentals, not upon  
7 uncharacteristic market inversions related to  
8 lags in class pricing.

9                   The Ohio Farmers Union believes that  
10 locally produced milk should serve local markets  
11 whenever possible. This principle is undermined  
12 by current pooling and qualification rules,  
13 which attract distant milk to Order 33 during  
14 inversions and class pricing. Under these  
15 circumstances, local dairy producers are  
16 effectively deprived of the opportunity to  
17 capture the full market of milk sold on the  
18 Order 33 pool.

19                   We strongly support changes in  
20 Federal Order 33 rules to raise requirements for  
21 qualifying milk not customarily associated with  
22 Federal Order 33 onto the Order 33 pool in any  
23 given month. In order to encourage more  
24 consistent pool participation among local milk  
25 handlers, we also support provisions to impose

1 structured criteria for re-entering the Order 33  
2 pool following a decision by any handler to  
3 depool local milk -- producer milk customarily  
4 associated with the Order.

5           We appreciate that several of the  
6 proposals submitted for consideration serve to  
7 support those intended purposes. All things  
8 being equal, we would tend to support the most  
9 rigorous of standards for access to the pool and  
10 penalties to dissuade local milk handlers from  
11 capriciously exiting and re-entering the pool,  
12 within practical limits.

13           Due to our preference for maintaining  
14 the integrity of local markets, we are hesitant  
15 to support transportation credits within the  
16 Federal Order system.

17           Understanding that today's hearings  
18 are limited in scope, we would only say that  
19 pool integrity issues such as those under  
20 consideration today are symptomatic of a price  
21 discovery system and a class pricing system in  
22 need of much additional scrutiny. Thank you.

23           JUDGE DAVENPORT: Are there  
24 individuals who would like to ask questions of  
25 this presenter?

1                   MR. BESHORE:        Your Honor, we  
2 would like to have Mr. Wolfe's testimony or  
3 statement -- receive his as testimony if he's  
4 willing, and I don't believe that he was sworn  
5 in for that purpose.

6                   JUDGE DAVENPORT:  He's not sworn  
7 because I was taking him as a representative of  
8 his group.  Are you willing to be sworn at this  
9 time?

10                  THE WITNESS:        Sure.

11                  JUDGE DAVENPORT:  Very well.

12                  (Thereupon, Mr. Wolfe was sworn by  
13 Judge Davenport.)

14                  JUDGE DAVENPORT:  Very well.

15 Mr. Beshore, does that comply with your Request?

16                  MR. BESHORE:        It does.

17                                    BRIAN WOLFE

18 of lawful age, a Witness herein, having been  
19 first duly sworn, as hereinafter certified,  
20 testified and said as follows:

21                                    CROSS-EXAMINATION

22 BY MR. BESHORE:

23 Q.   And, Mr. Wolfe, was -- the statement that  
24 you read on behalf of the Farmers Union, was  
25 that complete and accurate as if you had been

1 sworn prior to presenting it?

2 A. Yes.

3 Q. Okay. Now, is Ohio Farmers Union an

4 organization whose members are -- include dairy

5 farmers pooled on Order 33?

6 A. Yes.

7 Q. Are you a dairy farmer yourself?

8 A. Yes.

9 Q. Okay. And supplying milk under Order 33?

10 A. Yes.

11 Q. Okay. Was -- do you have an idea -- can

12 you tell us approximately the membership, if you

13 know, of Ohio Farmers Union that your statement

14 represents? How many farm members?

15 A. About 6,200.

16 Q. Sixty-two hundred?

17 A. Yeah, in that neighborhood.

18 Q. Okay. Farmers in Ohio?

19 A. Right.

20 Q. Okay. And do you know approximately what

21 portion of those are dairy farmers?

22 A. That I don't know. Up in my area I would

23 say probably a third. I'm from northeast Ohio.

24 Q. Okay. Now, was the -- do you hold an

25 office in the Ohio Farmers Union?

- 1 A. Yes.
- 2 Q. Okay. And what office do you hold?
- 3 A. I'm President of Ashtabula and Lake County  
4 Farmers Union. I'm Chairman of the Dairy  
5 Committee for Ohio.
- 6 Q. The state dairy committee?
- 7 A. Right.
- 8 Q. Okay. Now, was that statement, the  
9 statement that you presented, presented in your  
10 capacity as Chairman of the State Dairy  
11 Committee?
- 12 A. Yes.
- 13 Q. Okay. And as a representative of the  
14 organization for the state?
- 15 A. Right.
- 16 Q. Okay. And was it developed by the  
17 membership through its organizational structure  
18 and committee process?
- 19 A. The Dairy Committee met several times, and  
20 I think Joe Logan, our president, had met with  
21 Cameron Thraen from Ohio State University and I  
22 think David Walker before we did -- they  
23 submitted proposals to -- the proposals here  
24 today were submitted by Ohio Farmers Union.
- 25 Q. Okay. So your organization is a proponent

1 to the proposals of the hearing notice?

2 A. Yeah.

3 Q. And your statement is presented to support  
4 those proposal requests?

5 A. Right.

6 Q. And you gathered information, to the best  
7 of your ability, your organization and your  
8 committee to formulate the statement that you  
9 presented today?

10 A. Right, yes.

11 Q. Okay. Did you ever testify at one of these  
12 hearings before?

13 A. No.

14 Q. Okay. Would you know if a number of the  
15 dairy farmers that you're representing through  
16 Ohio Farmers Union have dairy farm enterprises  
17 which gross less than \$750,000 a year?

18 A. Do they gross less than 750?

19 Q. Yes.

20 A. Yes.

21 Q. Okay. So that they would be considered  
22 less than -- the line for small business  
23 enterprises in those proceedings, they would be  
24 under that line or be considered small  
25 businesses?

1 A. I can only think of one that would exceed  
2 that.

3 MR. BESHORE: Thank you,  
4 Mr. Wolfe.

5 JUDGE DAVENPORT: Very well. Other  
6 questions of Mr. Wolfe? Yes, sir,

7 MR. ENGLISH: Charles English for  
8 Dean Foods.

9 CROSS-EXAMINATION

10 BY MR. ENGLISH:

11 Q. Thank you for appearing today. It is your  
12 view that these abilities to pool or not pool or  
13 easily pool are adversely affecting income to  
14 Ohio dairy farmers?

15 A. Yes.

16 Q. And if, as my discussion with Ms. Uther a  
17 little while ago indicated, February would be  
18 another month where milk would be depooled,  
19 taken off the Order for negative price impacts,  
20 do you think that this is an emergency that  
21 needs to be resolved quickly?

22 A. I would say so. I think -- I sent a letter  
23 to Jim Petro last September about the depooling  
24 here in the State of Ohio and it costs Ohio  
25 dairy farmers \$12.1 million for those 12 months

1 prior to probably August of 2004 to August 2003,  
2 so I think it's quite a bit of cash that the  
3 dairy farmers are losing.

4 I think it was -- on a per farm basis, it  
5 would probably be in the neighborhood of \$2,500  
6 per farm in that period.

7 MR. ENGLISH: Thank you, sir.

8 JUDGE DAVENPORT: Yes, sir.

9 Mr. Miltner?

10 MR. MILTNER: Ryan Miltner for  
11 Continental Dairy Products.

12 CROSS-EXAMINATION

13 BY MR. MILTNER:

14 Q. Mr. Wolfe, thank you, again, for coming  
15 out to testify today. And I think I heard you  
16 state that your organization supports the most  
17 stringent proposals to curb depooling in the  
18 Order; is that correct?

19 A. Correct.

20 Q. And so if the Department were to decide  
21 that another proposal other than the two that  
22 the Ohio Farmers Union supported were more  
23 stringent than yours, would your organization  
24 support that proposal over yours, or --

25 A. I think so.

1 Q. Okay. And just -- you made a reference to  
2 Jim Petro. Since you and I are both from Ohio,  
3 but a lot of people here aren't, Jim Petro is  
4 our Attorney General, right?

5 A. Right.

6 MR. MILTNER: All right. Thank  
7 you.

8 JUDGE DAVENPORT: Other questions of  
9 Mr. Wolfe?

10 CROSS-EXAMINATION

11 BY MR. VETNE:

12 Q. Mr. Wolfe, I'm John Vetne. I represent  
13 White Eagle Milk Producers Federation. Are you  
14 a member of a cooperative that markets milk --

15 A. Yes.

16 Q. -- in 33? Which cooperative is that?

17 A. I belong to the Pennsylvania Farmers Union  
18 Milk Cooperative.

19 Q. That cooperative is not listed as what's  
20 called a 9(c) handler here. Do they place your  
21 milk in an Order 33 pool plant?

22 A. As far as I know, most of my milk goes to  
23 Middlefield Swiss Cheese in Middlefield, and I  
24 think most of the time it's qualified at Dean's,  
25 if that answers your question.

1 Q. Okay. Do you know who qualifies your milk?

2 Which regulated handler qualifies your milk?

3 A. I think most of the time it's Dean's in

4 Sharpsville.

5 Q. Dean's in Sharpsville?

6 A. I think so. I think occasionally they've

7 gone down to Superior in Canton, but I'm not a

8 hundred percent sure on that one.

9 Q. Okay. If the pool tightening proposals

10 would mean that you don't get a blend price part

11 of the time that you deliver your milk to your

12 regular cheese customer, would you still support

13 it?

14 A. If I didn't get a blend price?

15 Q. Yes.

16 A. I don't know.

17 Q. If it meant that you would have to incur

18 more transportation expenses to haul your milk

19 to various places under the proposals, would you

20 still support pool tightening?

21 A. Probably. I think we're losing more money

22 than what it would cost to get it shipped a

23 little farther.

24 Q. When milk was depooled, your milk went to

25 cheese, do you know whether your milk was

1 depooled?

2 A. That I don't know.

3 Q. When during the period when milk was  
4 depooled, let's say, March, April and May of  
5 last year, did you receive extra income  
6 reflecting the value of your milk in cheese?

7 A. You mean through the protein ingredients?

8 Q. No. I'm talking about the Class III price  
9 of depooled milk.

10 A. That I don't know.

11 Q. And you said you don't know whether your  
12 milk was depooled?

13 A. I don't know.

14 JUDGE DAVENPORT: Mr. Vetne, you're  
15 starting to tail off. We have some folks --

16 MR. VETNE: Okay.

17 THE WITNESS: I would like to --  
18 I did call my director of Pennsylvania Farmers  
19 Union Milk Co-op and asked him about these  
20 questions, and he said that he had a hard time  
21 with this language. And I was trying to  
22 understand what was going on before I came here  
23 and if he didn't I was pretty sure I was at a  
24 loss for it.

25 BY MR. VETNE:

1 Q. Mr. Wolfe, when you receive a milk check  
2 for milk pooled on Order 33, whose name is the  
3 payor on that check?

4 JUDGE DAVENPORT: Payor or payee?

5 BY MR. VETNE:

6 Q. Who's writing the check?

7 A. Pennsylvania Farmers Union Milk Co-op.

8 Q. And do you receive market information and  
9 other pooling data from Pennsylvania Marketing  
10 Co-op?

11 A. Uh-huh, yes.

12 Q. Okay. And does anybody else participate  
13 with that co-op to pool your milk that you're  
14 aware of?

15 A. No. I don't know.

16 Q. You don't know. Okay. Thanks.

17 JUDGE DAVENPORT: Other questions of  
18 Mr. Wolfe? Mr. Wolfe, thank you. You may step  
19 down. Unless there are objections, his  
20 statement will be marked as Exhibit 13 and  
21 admitted into the evidence.

22 (Thereupon, Exhibit 13 of the Mideast  
23 Federal Milk Marketing Order hearing  
24 was marked for purposes of  
25 identification.)

1                   JUDGE DAVENPORT: Any other  
2 individuals who have time constraints that would  
3 like to be heard at this time? Very well.  
4 Mr. Beshore, are you prepared?

5                   MR. BESHORE:        We call Edward  
6 Gallagher.

7                   JUDGE DAVENPORT: Mr. Gallagher,  
8 would you raise your right hand?

9                   (Thereupon, Mr. Gallagher was sworn  
10 by Judge Davenport.)

11                  JUDGE DAVENPORT: Please be seated.

12                  MR. BESHORE:        Your Honor, I would  
13 like -- before Mr. Gallagher begins to testify,  
14 I would like to request that his statement be  
15 marked as the next consecutive exhibit number.  
16 It's the statement of Edward W. Gallagher for  
17 Proponents --

18                  JUDGE DAVENPORT: It will be marked  
19 as Exhibit 14.

20                  MR. BESHORE:        And that the  
21 exhibit set be marked as Exhibit 15. And that's  
22 entitled "Tables and Chart Submitted by DFA,  
23 MMPA and NFO." We do have, I hope, sufficient  
24 copies of both Mr. Gallagher's statement and  
25 exhibits in the exhibit packet in the hearing

1 room.

2 (Thereupon, Exhibits 14 and 15 of the  
3 Mideast Federal Milk Marketing Order  
4 hearing were marked for purposes of  
5 identification.)

6 EDWARD W. GALLAGHER  
7 of lawful age, a Witness herein, having been  
8 first duly sworn, as hereinafter certified,  
9 testified and said as follows:

10 DIRECT EXAMINATION

11 BY MR. BESHORE:

12 Q. Mr. Gallagher, would you please give us  
13 your business address for the record?

14 A. Yes. My business address is Dairylea  
15 Cooperative, 5001 Brittonfield Parkway,  
16 Syracuse, New York 13221.

17 Q. And by whom are you employed and in what  
18 capacity?

19 A. I'm employed by Dairylea Cooperative and  
20 Dairy Marketing Services as their vice president  
21 of planning and regulatory policy.

22 Q. What's your educational background,  
23 Mr. Gallagher?

24 A. I grew up on a dairy farm in Central New  
25 York. I have a bachelor's degree in

1 agricultural economics and farm business  
2 management from Cornell University, and a  
3 master's degree in agricultural economics from  
4 the Ohio State University.

5 Q. After -- can you give us -- tell us what  
6 professional pursuits you've had, your  
7 professional job background, post education to  
8 the present?

9 A. My senior year at Cornell I was hired by,  
10 what was at the time, the New York/New Jersey  
11 Federal Milk Market Administrator's office, and  
12 upon graduation worked for them full time in  
13 their offices in New York City. I worked for  
14 them for 12 years in a series of different jobs,  
15 including cooperative relations, an agricultural  
16 economist and the chief of research.

17 In 1996 I was hired by Dairylea into my  
18 current position and I've been employed there in  
19 Syracuse ever since.

20 Q. Have you previously testified in Federal  
21 Order hearings?

22 A. Yes, I have.

23 Q. Okay. And other legal proceedings?

24 A. Yes, I have.

25 Q. Both as an employee in the Market

1 Administrator's office and as working with  
2 Dairylea?

3 A. Yes, I have.

4 Q. Okay. Have you testified at state  
5 regulatory proceedings as well?

6 A. Yes, I have.

7 Q. And in what states?

8 A. New York and Pennsylvania. I guess if you  
9 want to call the compact -- the state process  
10 compact hearing.

11 Q. Okay. That's the former Northeast  
12 Interstate --

13 A. Dairy Compact.

14 Q. -- Dairy Compact. Okay.

15 MR. BESHORE: Your Honor, I would  
16 offer Mr. Gallagher as an expert witness in  
17 dairy marketing and agricultural economics and  
18 make him available for any voir dire on that if  
19 anyone --

20 JUDGE DAVENPORT: Okay. Anything  
21 from any other counsel? There being none, you  
22 may proceed.

23 BY MR. BESHORE:

24 Q. Now, Mr. Gallagher, have you been called to  
25 present a statement and some exhibits in this

1 hearing today?

2 A. Yes, I have.

3 Q. Okay. And through some unhappy

4 circumstances you're substituting for

5 Mr. Hollon, who would otherwise have been

6 involved in the proceeding?

7 A. That's correct.

8 Q. Okay. Now, let's look at first Exhibit 15,

9 which are the tables and charts submitted with

10 your testimony. And I would like to go through

11 those documents individually and ask you to

12 describe them and their source briefly so that

13 we have some context as you refer to them in

14 your prepared statement. Exhibit 15, Table 1,

15 tell us what that is.

16 A. Table 1 identifies the Federal Milk

17 Marketing Orders, and shows that for the year

18 2004 how many pounds of producer milk were

19 classified under Class I under each of those

20 Orders.

21 Q. Okay. Exhibit 15, Table 2 is in five pages

22 identified as 2-A through 2-E; is that correct?

23 A. That's correct.

24 Q. Okay. And what -- describe now what

25 information is presented in Tables 2-A through

1 2-E.

2 A. Each -- each letter of the table refers to  
3 information for a year, with A being 2000 and E  
4 being 2004. And it shows monthly information  
5 for utilization and statistical blend prices  
6 under the Mideast Federal Order.

7 And, for instance, in Table 2-A, we have  
8 the base zone listed in the first column which  
9 is the zone in the Cleveland market -- of the  
10 Cleveland part of the market as the Class I  
11 price for that base zone, Class II price, the  
12 Class III price and the Class IV price.

13 It identifies the pounds of producer milk  
14 pooled in each classification and sums them  
15 under the columns that are entitled "All." It  
16 calculates the Class I, II, III and IV  
17 utilization based on those pounds. It  
18 identifies the statistical uniform price and the  
19 producer price differential pursuant to the base  
20 zone of \$2.

21 Q. Okay. Now, those were the information sets  
22 presented going from left to right on the Table  
23 2-A; is that right?

24 A. That's correct.

25 Q. And you said statistical -- the statistical

1 uniform price, is that the column identified as  
2 quote, "Actual Blend," closed quote, on the  
3 exhibit?

4 A. Yes, it is.

5 Q. Okay. And 2-A is for calendar year 2000,  
6 and the other pages, B through E, are for the  
7 calendar years through 2004 in sequence; is that  
8 correct?

9 A. That's correct.

10 Q. What's the \$2 figure under the base zone in  
11 each instance?

12 A. That's the Class I differential applicable  
13 to the base zone in the Mideast Order.

14 Q. Okay. Let's turn then to Table 3 of  
15 Exhibit 15. This is a two-page table, is it  
16 not?

17 A. Yes, it is.

18 Q. Now, is -- was this possibly miscalated in  
19 the --

20 A. Yes.

21 Q. -- exhibit?

22 A. Yes, it was. The first page of Table 3 is  
23 actually page 2, and the second page is page 1.

24 Q. Okay. Now, if you could refer to what is  
25 the intended first page of Table 3, tell us what

1 the subject of Table 3 is, and then describe the  
2 data, again, going in columns from left to right  
3 on the exhibit?

4 A. Okay. This table identifies -- the purpose  
5 of this table is to identify an index to show  
6 the percentage of milk after January 2000 as a  
7 percentage of the milk in the pool for the month  
8 of January 2000, and let me just describe it.  
9 In January 2000, the first column identifies the  
10 producer receipts pooled in Class I, and the  
11 second column refers to the producer receipts  
12 pooled in Class II. The third column sums those  
13 two columns, and since January 2000 is our base  
14 index year, it's at a hundred percent of the  
15 base index.

16 Q. Base index month, I take it?

17 A. Base index month. That's correct. If you  
18 go to December of 2000 and you look at the base  
19 index being 87 percent, that means that the  
20 Class I and Class II pounds pooled in December  
21 of 2000 were 87 percent of the Class I and II  
22 pounds pooled in January 2000, and all the  
23 percentages refer back to January 2000.

24 The information then, if you move to the  
25 right, your next set of columns is computed

1 separately for Class III and Class IV with an  
2 index calculated relative to the Class III and  
3 Class IV pounds in the pool in January of 2000.

4 Q. So if you look at the December 2000 month,  
5 again, to illustrate calculation of the index,  
6 what does that show for the Class III and IV,  
7 and --

8 A. Class III and IV producer receipts in the  
9 Mideast Order pool were 159 percent of their  
10 level in January 2000.

11 Q. In December of 2000 it was 159 percent of  
12 January?

13 A. Yes, that's correct.

14 Q. Now, what's the -- you discuss this in your  
15 testimony, but just tell us. What's the  
16 rationale behind calculating the index that you  
17 have?

18 A. Sure. January 2000 was the first year  
19 under the combined Federal Order relative to the  
20 Federal Order reform process. After the  
21 industry got comfortable with the new Order,  
22 there was opportunities -- the industry realized  
23 there were opportunities to pool additional milk  
24 on the Mideast Order, and this index,  
25 particularly the Class III and IV index,

1 highlights the extent of the additional milk  
2 that was pooled on the Order since Federal Order  
3 reform began in January of 2000.

4 For instance, in December of 2001, we see  
5 that more than twice the amount of Class III and  
6 IV milk was pooled on the Mideast Order than was  
7 being pooled out of the chute of Federal Order  
8 reform.

9 Q. Okay. The first page of Table 3 then are  
10 monthly -- it's monthly information for January  
11 2000 through December 2001; is that correct?

12 A. That's correct.

13 Q. And the second page of Table 3 is for the  
14 calendar years 2002 through 2004?

15 A. That's correct.

16 Q. Okay. Let's turn then to Table 4 of  
17 Exhibit 15. This is a five-page table labeled  
18 Table 4A through 4E, the pages in turn; is that  
19 correct?

20 A. That's correct.

21 Q. Can you describe the information on this  
22 table?

23 A. Each subtable A through E represents a  
24 calendar year, with the first year being  
25 calendar year 2000 and on E calendar year 2004.

1 And for each calendar year, it provides  
2 information on a monthly basis and it's a  
3 comparison of the relative values of milk in a  
4 particular area in Ohio and the returns that  
5 that milk could get relative to that milk being  
6 pooled on Federal Order 5 or Federal Order 33.

7 Let me go through one particular month as  
8 an example. On Table 4A for calendar year 2000  
9 for the month of January, the statistical blend  
10 price at the zone where the Federal Order 5  
11 price is announced, Mecklenburg, North Carolina  
12 was \$12.82 in January 2000.

13 For a Federal Order 5 pool plant in  
14 Winchester, Kentucky, the location adjustment is  
15 minus \$0.90. So the statistical blend price at  
16 that plant under Order 5 would be \$11.92.

17 In the Minster, Ohio area, if milk -- farm  
18 milk was delivered to Winchester, Kentucky, the  
19 freight is estimated to be .99 -- is .99 per  
20 hundredweight, leaving a net return of \$10.93 to  
21 a producer in Minster, Ohio that delivers to  
22 Winchester, Kentucky and has his milk pooled  
23 under Order 5.

24 That would compare to the opportunity under  
25 Order 33 where the producer, instead of

1 delivering to Winchester, Kentucky, delivered to  
2 an Order 33 pool plant in Cincinnati, Ohio,  
3 nearby Winchester, Kentucky. It shows that the  
4 statistical Federal Order blend in the Cleveland  
5 area, the base zone, was 11.23, but the  
6 adjustment to Cincinnati is a plus \$0.20 for a  
7 statistical blend price of 11.43. The freight  
8 for the producer in the Minster, Ohio area to  
9 get to Cincinnati would be .81, leaving a net  
10 return after freight of \$10.63 per  
11 hundredweight.

12 That final line, the net -- F.O. 5, the net  
13 gain, Winchester, Kentucky versus Cincinnati,  
14 Ohio, shows that the producer would be better  
15 off by .31 per hundredweight delivering his or  
16 her milk to the Order 5 location in Winchester,  
17 Kentucky as opposed to Cincinnati, Ohio.

18 That same computation was made for each  
19 month, January through December, for each  
20 calendar year 2000 through 2004.

21 Q. Does the information at the bottom of each  
22 page indicate the mileage and other assumptions  
23 relating to the hauling charges?

24 A. Yeah. It describes the assumptions that  
25 were made to calculate the hauling charges.

1 \$2.20 per loaded mile was used. The load size  
2 was assumed to be 48,000 pounds and the distance  
3 between the Minster, Ohio and Cincinnati, Ohio  
4 is determined to be 176 miles, and the distance  
5 between Minster, Ohio area and Winchester,  
6 Kentucky was determined to be 215 miles. And  
7 those factors went into the calculation of the  
8 freight costs that were used in the calculation.

9 Q. Okay. Let's turn to --

10 JUDGE DAVENPORT: Counsel, if I  
11 might, unfortunately I happen to be from  
12 Kentucky. What route were you using to compute  
13 the difference between Cincinnati and  
14 Winchester?

15 THE WITNESS: I'm sorry, but I  
16 don't know that because I didn't make that  
17 calculation.

18 JUDGE DAVENPORT: If you look at the  
19 map, there's a whole lot more miles involved  
20 between Cincinnati and Winchester than there are  
21 reflected on this chart.

22 THE WITNESS: I've -- we'll go  
23 back and we'll check that tonight, and if  
24 there's a change we'll redo this chart and  
25 re-submitted it.

1                   MR. BESHORE:        We will determine  
2 what trip -- what trip mileage we were using  
3 to --

4                   THE WITNESS:        But I would say the  
5 difference in mileage between the 176 -- 215 and  
6 176 isn't necessarily the difference between  
7 Cincinnati and Winchester. It depends on where  
8 the farm that they were using was located and  
9 that point is going to be, I think --

10 BY MR. BESHORE:

11 Q. Well, we're talking about plant location in  
12 Winchester.

13 A. Right.

14 Q. Delivery locations in Winchester area.

15 A. We'll double check.

16                   MR. BESHORE:        We'll find that out  
17 and clarify that, Your Honor.

18 BY MR. BESHORE:

19 Q. Now, let's turn to Table 5, Mr. Gallagher,  
20 and could you describe that information, please?

21 A. This is a summary of supplemental milk  
22 purchases made by Dairy Farmers of America  
23 during October 2004. It identifies milk that  
24 was purchased from what we're calling outside  
25 the area, outside the marketing area. It

1 identifies milk that was purchased in the  
2 states -- or from the states of Illinois,  
3 Michigan and Wisconsin and Minnesota and then  
4 delivered to Class I distributing plants in  
5 Indiana, Ohio and Pennsylvania. It shows the  
6 total pounds by state of origin to particular  
7 destination. It shows the average miles that  
8 those loads of milk traveled and it calculates a  
9 weighted average loaded mile for those trips.

10 So, for instance, in October 2004 DFA  
11 purchased 1,649,000 pounds of milk from  
12 locations in Illinois and delivered it to plants  
13 in Ohio. Those loads of milk traveled on  
14 average 593 miles and the weighted average cost  
15 per loaded mile of those deliveries was \$2.02.  
16 That same type of information was calculated in  
17 each ensuing row, and the bottom row and the far  
18 right column sums the information.

19 Q. Okay. And this is actual information for  
20 October 2004; is that correct?

21 A. That is correct.

22 Q. And for Order 33 delivery points?

23 A. Yes.

24 Q. Now, let's turn then to Exhibit -- Table 6  
25 of Exhibit 15. First of all, is this -- is

1 Table 6 in two parts, that is, a one-page  
2 summary tabulation and then supportive  
3 photocopies of invoices and related documents?

4 A. That's right.

5 Q. Okay. So describe the Table 6 Summary of  
6 Hauling Invoices, please.

7 A. This is a summary of actual hauling  
8 invoices for the fall and winter of 2004 and  
9 2005. They're representative hauler invoices  
10 for DFA's business, and it identifies milk  
11 purchased from out of area sources for  
12 supplemental milk supplies.

13 Q. Into Order 33?

14 A. Into Order 33. For instance, the first box  
15 on that table identifies purchases from Family  
16 Dairies 10 -- October 11th, 2004, from Wisconsin  
17 for delivery to Indiana. The average hauling  
18 bill with an 8 percent fuel surcharge was  
19 \$20,669.61. That was for 26 loads of milk. On  
20 average, those loads traveled 310 miles to their  
21 destination, and the weighted average cost per  
22 loaded mile for those loads was \$2.56.

23 Q. Okay. And the --

24 A. And the similar information is shown in  
25 each of the other boxes. I will say the last

1 two boxes that are from Caledonia and the  
2 exhibits says "From Wisconsin," the Caledonia  
3 where those loads came from is Minnesota.

4 Q. So those are deliveries from Caledonia,  
5 Minnesota by a transport company named Caledonia  
6 Haulers as well, correct?

7 A. Yes. I'm sorry.

8 Q. From Caledonia, Minnesota to locations in  
9 Indiana?

10 A. Yes.

11 Q. Okay. Now, the locations of delivery from  
12 and delivery to, are these representative order  
13 and deliveries for supplemental milk for Order  
14 33 during this period of time?

15 A. These are representative, yes.

16 Q. And the invoices behind the summary sheet,  
17 do they reflect the information on the summary  
18 and also include some additional information?

19 A. That's correct. With a little bit of  
20 searching around you will be able to identify  
21 the Family Dairies' actual hauling bill that  
22 goes along with it. It's listed in here.  
23 There's one printout, fairly long printout, it's  
24 the one you can't read very well. There's  
25 approximately, I don't know, let's see, 60

1 times --

2 Q. Three pages of --

3 A. There's three pages. There's about 180 to  
4 200 loads of milk represented on there. That  
5 data is abandoned for you guys. It's not  
6 included in this table, but we submitted it  
7 anyway. And anybody can go through and make the  
8 same type of calculation using this data and I'm  
9 confident it would show that you have the same  
10 type of representative haul -- loaded mile haul  
11 rates for this data that you would see with the  
12 stuff we've already calculated.

13 Q. Okay. So there are actual reports here  
14 that support the summary, and in addition  
15 there's a three-page printout of single line  
16 destination from and delivery --

17 A. That's right. (Indicating.)

18 Q. -- information which shows dates of  
19 delivery, trips and ticket numbers, the point  
20 from which and the point to which in Order 33  
21 the load came and the hauling charge on the  
22 load; is that correct?

23 A. That's correct.

24 Q. Okay. So is it your testimony that, the  
25 best of your knowledge, those support the -- you

1 know, the rates that are summarized in the other  
2 transactions as well?

3 A. That's correct.

4 Q. Now, there are two charts in -- I'm sorry,  
5 there's one final table, Table 7 --

6 A. Yes.

7 Q. -- in Exhibit 15. Can you tell us what  
8 Table 7 is?

9 A. Yes. Table 7 is a recombination of  
10 information that we requested from the Market  
11 Administrator's office. It's shown in Exhibit  
12 Number 7 as Request Number 7, and this data was  
13 taken, and we show the first few mileage ranges  
14 through 80 miles subtotal the pounds that are in  
15 those mileage ranges with each of the five  
16 regions, compare that to the total milk that was  
17 shown on Exhibit 7, Request 7, determine how  
18 much milk was outside of those 80 mile zones and  
19 calculate then how much was inside the zones as  
20 a percentage.

21 So, for instance, in zone -- in the mileage  
22 ranges 1 through 80, there were 73,735,350  
23 pounds of milk during October 2004.

24 Q. In Northern Ohio?

25 A. In Northern Ohio. The total amount of milk

1 was 92,000 -- excuse me, 92,080,764 pounds,  
2 meaning 18,345,414 pounds were from mileage  
3 ranges beyond 80 miles. And that means 80  
4 percent of the milk was in mileage ranges up to  
5 80 miles.

6 Q. Okay. When the exhibit says "exempt," you  
7 had explained that in your testimony, but that  
8 refers to an estimate, not quite precise, but an  
9 estimate of the volumes that would not qualify  
10 for transportation credits under Proposal 9?

11 A. Nine. Correct.

12 Q. Okay. Now, let's go then to the two charts  
13 in Exhibit 15. Chart 1?

14 A. Chart 1 is a graphical representation of  
15 the information on Exhibit -- or on Table 3.

16 Q. Of Exhibit 15?

17 A. Of Exhibit 15. It shows the Class I and II  
18 index, and the Class I and -- excuse me, the  
19 Class III and IV index with the lighter shaded  
20 bars being Class III and IV index, and the  
21 darker shaded bars being the Class I and II.  
22 And, again, that shows percentage -- for a  
23 particular month, the percentage of Class III or  
24 IV and Class I or II milk for that month as  
25 compared to January 2000. And you'll note when

1 you look at January 2000 it's dead on even at a  
2 hundred percent. That's the index -- base index  
3 month.

4 Q. Roughly 50 percent Class I and II, and 50  
5 percent Classes III and IV for that month?

6 A. Let me look. Indexes would be a hundred  
7 percent regardless of whether it's 50/50.

8 Q. My -- well, that's -- I withdraw that  
9 question. That's not quite correct.

10 Where there's almost no gray bar in April  
11 '04, does that represent a month when basically  
12 all the Class -- the great majority of Class III  
13 and IV milk was depooled?

14 A. Yes. That's what it represents.

15 Q. Okay. Let's go to Exhibit 15, Chart 2  
16 then.

17 A. Exhibit 15, Chart 2 shows per -- dollar per  
18 gallon diesel fuel prices for the Midwest area,  
19 which includes the greater Ohio area. It's a  
20 monthly detection of those prices as surveyed  
21 and reported by the United States Department of  
22 Energy. It begins in January 1999 and goes  
23 through January 2005.

24 Q. Okay. Now, you have a prepared statement  
25 which has been marked as Exhibit 14, and would

1 you proceed with your testimony, Mr. Gallagher?

2 A. Yes. Dairy Farmers of America, Inc.,  
3 Michigan Milk Producers Association, Dairylea  
4 Cooperative, Inc., and the National Farmers  
5 Organization together are the Proponents of  
6 Proposals 1, 2, 7 and 9. Dairy Farmers of  
7 America, DFA, is a member owned Capper Volstead  
8 cooperative of 13,500 farms producing milk in 49  
9 states. DFA pools milk on 9 of the 10 Federal  
10 Milk Marketing Orders, including the Mideast  
11 Federal Order.

12 Michigan Milk Producers Association, MMPA,  
13 is a member owned Capper Volstead cooperative of  
14 1,680 farms -- strike the number that's in  
15 there. It's 1,680 farms producing milk in four  
16 states. MMPA pools milk on the Mideast Federal  
17 Order. Dairylea Cooperative, Dairylea, is a  
18 member owned Capper Volstead cooperative of  
19 2,400 farms producing milk in seven states.  
20 Dairylea member milk is pooled in 3 of the 10  
21 Federal Milk Marketing Orders, including the  
22 Mideast Federal Order.

23 National Farmers Organization, NFO, is a  
24 member owned Capper Volstead association  
25 marketing milk for more than 1,500 farms

1 producing milk in 18 states. NFO pools milk on  
2 6 of the 10 Federal Milk Marketing Orders,  
3 including the Mideast Federal Order.

4 The Proponents are very strong supporters  
5 of Federal Milk Marketing Orders. Inasmuch as  
6 we are advancing a number of proposals to  
7 correct certain marketing issues that have  
8 developed and that are undermining the integrity  
9 of the Mideast Federal Order and creating  
10 disorderly marketing conditions. These issues  
11 need immediate attention and action. The  
12 central issue of this hearing is to provide for  
13 more orderly marketing by adjusting certain  
14 performance qualification criteria for sharing  
15 in the marketwide pool proceeds of the Order and  
16 recognizing that the cost of serving the Class I  
17 market should be borne in a greater way by all  
18 producers who share in the Order's revenues.  
19 Failure to address these issues will be  
20 detrimental to all the members of our  
21 cooperatives, both in their day-to-day dairy  
22 farm enterprises and the investments that they  
23 have made in milk processing businesses.

24 Summary of Proposals for this Hearing.  
25 DFA, MMPA, Dairylea and NFO advance a series of

1 proposals for the Mideast Federal Order to  
2 address the present day dynamics surrounding the  
3 pooling of milk under Order 33. These issues  
4 are quite similar to those that have been or are  
5 being addressed in a number of other Federal  
6 Milk Marketing Orders. DFA has made and  
7 supported similar proposals in other Orders, and  
8 together with MMPA provided proposals and  
9 supporting evidence at the 2001 Mideast Order  
10 hearing on pooling and performance standards.  
11 That was AO-168-A68. DFA and Dairylea have  
12 advanced similar proposals at the 2002 Northeast  
13 Order hearing, which is AO-14-A70.

14 The supporters of Proposals 1, 2, 7 and 9,  
15 consider market conditions that now exist in  
16 Order 33 to be disorderly and these proposals  
17 are offered as remedy. Please note that DFA,  
18 MMPA, Dairylea and NFO also are supporters of  
19 Proposal 10 dealing with producer-handlers. We  
20 appreciate that this proposal has been removed  
21 from this proceeding to be heard at a later  
22 date.

23 Proposal 1 will incorporate language into  
24 Order 33 that will eliminate the possibility of  
25 simultaneously pooling the same milk both in a

1 Federal Milk Marketing Order and a State Milk  
2 Marketing Order with a marketwide pool. Please  
3 note that Order 33 does not presently have the  
4 language recently incorporated in other Orders  
5 that establishes this safeguard. Testimony will  
6 be presented and official notice taken of prior  
7 hearing records in an effort to incorporate that  
8 concept and language into Order 33.

9 Proposal 2 deals with pool performance  
10 standards. Its goal is to better define those  
11 producers who are consistently providing service  
12 to the Class I market and thus should share in  
13 the blended Class I market returns. Michigan  
14 Milk will present its own modification to this  
15 proposal.

16 Proposal 7 deals with the issue known as  
17 depooling. Its goal is to mitigate the  
18 incidence of and blend price impact of the  
19 practice of depooling. This proposal seeks to  
20 create economic consequences on handlers for  
21 choosing to have some of their milk, quote, opt  
22 out, end quote, of the pool. DFA, MMPA,  
23 Dairylea and NFO, depool milk when economically  
24 advantageous to our members and logistically  
25 feasible. However, we think this practice is

1 detrimental to the Order system and to dairy  
2 farmers and wish it stopped or curbed. During  
3 Federal Order Reform, the Secretary of  
4 Agriculture recognized depooling as an Order  
5 issue when he incorporated changes to the data  
6 used in and the timing of announcements for  
7 Class I pricing. These changes were intended to  
8 limit price inversions -- excuse me, these  
9 changes were limited -- excuse me. These  
10 changes were intended to limit price inversions  
11 which contributed to depooling. Also, hearings  
12 have been held in other markets to address this  
13 same issue.

14 Proposal 9 would establish a transportation  
15 pool funded by blend price revenues to offset a  
16 portion of the cost to transport milk to pool  
17 distributing plants for Class I use. We will  
18 present two witnesses, Mr. Rasch and myself, to  
19 deal with the specifics of our proposal and the  
20 technical workings of the language we propose.  
21 We will also present several dairy farmers who  
22 will address the current operation of Order 33  
23 and how it affects them as individual producers.

24 Proposal 1, Dual Pooling. Proposal 1, when  
25 adopted, will eliminate the potential for milk

1 to be simultaneously pooled on Order 33 and the  
2 State Marketing Order with marketwide pooling.  
3 This is a disorderly marketing practice which  
4 has now been prohibited in other Orders where it  
5 has occurred or could occur. We request that  
6 official notice be taken of the following  
7 decisions of the Secretary. Those decisions are  
8 noted there in sequential order of their  
9 records -- their decisions.

10 We note that today little California milk  
11 is associated with Order 33. However, the same  
12 thing could have been said about California milk  
13 in calendar year 2000 in Order 30, there was  
14 none on the pool. But from 2001 to 2003, a  
15 large quantity of milk was pooled in the Upper  
16 Midwest Order and it was milk from California.  
17 California milk pooled on Order 30 first because  
18 it was the easiest and most lucrative Order to  
19 attach to. After that option was no longer an  
20 alternative, much of the milk moved to the  
21 Central Order and then to the Western Order.

22 California milk moved between the Orders as  
23 provisions allowed. The parties that pooled the  
24 California milk were acting in their own self  
25 interests and made rational economic decisions

1 within the framework of the rules allowed.  
2 However, we, much of the rest of the industry,  
3 and eventually the Secretary, felt this type of  
4 pooling was disorderly and adopted regulations  
5 to limit California milk from pooling in Orders  
6 1, 30, 32, 124 and 131. This same provision  
7 should now be brought to Order 33.

8 Class I Value and Performance Standards.  
9 The Mideast Order is the second largest Federal  
10 Order market in terms of Class I use with 6.546  
11 billion pounds of Class I sales, see DFA Exhibit  
12 15, Table 1, Annual Class I Pounds by Federal  
13 Milk Marketing Order Area, 2004. These Class I  
14 sales provide the bulk of the revenue to  
15 producers in excess of the Class III and IV  
16 market clearing price. In the Mideast Order, it  
17 is this revenue that generates the blended  
18 producer price differential that creates the  
19 enticement for dairy farmers and cooperatives to  
20 be part of the Order and serve the Class I  
21 market.

22 MA Exhibit Number 7, DFA Request Number 14,  
23 Mideast Class I Value Versus Producer Value of  
24 Producer Milk Allocated to Class I details just  
25 how much of the Mideast Order's pool values are

1 derived from the value of Class I milk. For  
2 example, in January 2000, the skim and butterfat  
3 Class I value of the pool was \$67.0 million.  
4 For these Class I deliveries, producers were  
5 paid \$60.6 million, i.e., for their pounds of  
6 butterfat, true protein and other solids and the  
7 PPD on this volume. \$6.4 million remained in  
8 the pool. The \$6.4 million was shared on an  
9 equal per hundredweight basis after adjusting  
10 each producer's payment for location of  
11 delivery, with all the remaining producers in  
12 the pool via the producer price differential  
13 payment. Class I sales generated these extra  
14 dollars. This table also clearly shows that the  
15 value contributed by Class I is not static. In  
16 the period covered by the table, the Class I  
17 contribution ranged from a high of \$21.1 in June  
18 2004 to a low of \$1.0 million in April 2004.  
19 The question of who shares in these values is  
20 the key question at this hearing.

21       Should performance standards allow milk to  
22 opt in and out of the pool on a month-to-month  
23 basis depending on the relative blend price  
24 return, sharing in the Class I market's returns  
25 on the same basis as milk that supplies the

1 Class I market's regular every day, every week,  
2 every month demand? We think it should not.

3       Should the second largest Class I sales  
4 market have stricter performance standards than  
5 currently? We think it should. Should Order 33  
6 performance standards be so lenient that it does  
7 not provide enough of an economic incentive to  
8 attract in-area milk production away from  
9 manufacturing uses causing Class I suppliers to  
10 seek supplemental milk supplies from more  
11 distant out-of-area sources at significantly  
12 higher costs? We think they should not. Should  
13 all producers who share in the market's Class I  
14 return have a greater obligation to help offset  
15 some of the cost of supplying the market's  
16 everyday Class I needs? We think they should.  
17 These questions form the focus of our proposals.

18       The decision from the 2001 Order 32,  
19 Central Order, hearing directly addresses the  
20 relevant questions before us at this hearing and  
21 provides direction for both the proposals and  
22 the testimony and evidence provided to support  
23 them. The following are highlights from that  
24 decision. They're in the exhibit that is part  
25 of the record and I'm not going to read them

1 right now, but they're in the exhibit. We'll  
2 skip over that and we'll pick up on page 8 where  
3 it says "Proposal 2 Performance Standards."

4       The performance standards for the Mideast  
5 Order are inadequate. Although performance  
6 standards were changed once since Federal Order  
7 Reform was implemented, these standards need  
8 further review and adjustment. Proposal 2 is  
9 offered as a cure for this issue. Current  
10 provision, while improved from the standards set  
11 in Order reform, are still too lax and allow far  
12 more milk to be associated with the market than  
13 is appropriate to be carried as a reserve  
14 supply. The Federal Order Reform targeted goal  
15 of a 58.9 percent Class I use has never been  
16 achieved, except in April 2004 when most of the  
17 reserve supply exited the pool. Excess reserves  
18 depress the blend price for producers that serve  
19 the everyday needs of the market. The Mideast  
20 Order has adequate reserves located in the  
21 marketing area, but still imports supplemental  
22 milk supplies from reserve areas because Order  
23 values do not bid the milk away from in-area  
24 manufacturing uses.

25       If performance standards were enhanced, the

1 blend price would be higher providing more  
2 incentive to deliver local milk to the Class I  
3 market. Also, the enhanced standard itself  
4 would cause additional milk to deliver to the  
5 Class I market or to decline to share in the  
6 pool returns, again raising prices to all the  
7 remaining pool producers. This would reduce  
8 significantly supplemental Class I milk  
9 transport costs and milk premiums that are paid  
10 to attract reserve milk supplies. These extra  
11 costs of transporting and procuring supplemental  
12 Class I milk are not borne equally by all  
13 producers in the market, although all share  
14 equally in the resulting Class I returns  
15 generated by these actions.

16 Furthermore, we are concerned that a  
17 pooling situation may develop with milk supplies  
18 from the Mountain states, similar to the double  
19 dipping concerns from California milk supplies  
20 that occurred only a few months ago. Large  
21 volumes of milk could get attached to the  
22 Midwest Order from distances so far away that it  
23 can rarely, if ever, serve the market. This  
24 situation has already occurred in the Upper  
25 Midwest Order and we want to ensure that

1 performance standards are adequate in the  
2 Mideast Order to prevent the regular pooling of  
3 milk from distant areas when such milk does not  
4 adequately or fairly serve this market's Class I  
5 needs.

6 Excess Reserves, Distant Milk Concerns.  
7 Order 33's reserve supplies have been reduced  
8 from their late 2001 and early 2002 peak. This  
9 is likely as a result of the modifications  
10 implemented due to the first performance  
11 provisions hearing. This reduction in the  
12 reserve supply can be seen in DFA Exhibit 15,  
13 Table 3, Comparison of Fluid Use Pounds and  
14 Reserve Supply Pounds Federal Order 1033,  
15 January 2000 through December 2004, and the  
16 accompanying chart, DFA Exhibit 15, Chart 1,  
17 Comparison of Indexed Fluid Use Pounds Versus  
18 Reserve Supply Pounds Federal Order 1033,  
19 January 2000 to December 2004.

20 DFA Exhibit 15 compares reserve supplies in  
21 indexed form -- it's Table 3, in index form from  
22 January 2000 to December 2004 using January 2000  
23 as a base. Despite the changes from the 2001  
24 hearing, these two exhibits show that a  
25 significant amount of excess reserve supply

1 still remains attached to the Order. For  
2 instance, the January 2004, Class III plus Class  
3 IV index of 192 percent means that 92 percent  
4 more Class III and IV milk was pooled on Order  
5 33 than in January 2000, the advent of the  
6 Federal Order Reform. This occurred even though  
7 there was only 7 percent more Class I and II  
8 milk pooled. The 192 percent January 2000 to  
9 January 2004 relationship seems very high for  
10 this market, still it is down some from early  
11 2002. This is even more pronounced by the  
12 difference in pounds pooled. Comparing January  
13 2000 with January 2004 shows there was 50.5  
14 million pounds more of Class I and II receipts  
15 pooled and 338.9 million pounds more of Class  
16 III and IV receipts pooled in 2004.

17 Some may claim that this level of reserve  
18 supply is needed or should be part of the Order  
19 for various reasons. But that argument must  
20 surely be weakened when, as shown by the data,  
21 the reserve readily leaves the market and is not  
22 available to supply the Class I market any time  
23 the PPD relationship is not economically  
24 attractive.

25 The best indicator of actual availability

1 is that shown by own choice. If a milk supplier  
2 chooses to opt out of the pool, then it  
3 indicates to the market an unwillingness to be a  
4 consistent supplier. DFA has had supplemental  
5 suppliers refuse to make deliveries when faced  
6 with the opportunity to receive a negative PPD.  
7 The rationale that a large supply should have  
8 access to the pool must be measured against its  
9 ongoing availability to accurately -- excuse me,  
10 to actually serve the market.

11 MA Exhibit 7, DFA Request Number 1(a),  
12 Mideast Producer Milk by State 2000 to 2004  
13 shows performance trends and geographic milk  
14 supplies pooled on the Mideast Order. The data  
15 is divided by state, by year and by month for  
16 the period January 2000 through December 2004.  
17 The states with consistent supplies -- excuse me  
18 for a second, please. The data is divided by  
19 state, by year, by month for the period of  
20 January 2000 to December 2004. The states with  
21 consistent supplies pooled, but from generally  
22 outside the marketing area, show a doubling or  
23 greater volume of pooled milk since 2000.

24 Specifically, Illinois receipts have  
25 increased from 5.9 million pounds to 11.8

1 million pounds; Iowa receipts from 0.9 million  
2 to 5.7 million; Minnesota receipts from 0 to 3.1  
3 million and Wisconsin receipts from 83.5 million  
4 to 206.4 million is a 147 percent increase. The  
5 primary in-area milk supply states have not  
6 shown similar trends. Indiana receipts pooled  
7 on Order 33 have increased from 137.2 million  
8 pounds to 142.9 million pounds; Michigan from  
9 425.7 to 442.7 million pounds and Ohio from  
10 302.7 to 303.6 million pounds.

11       The increase in receipts from areas  
12 generally outside the marketing area has not  
13 resulted in larger volumes of shipments to pool  
14 distributing plants. MA Exhibit 7, DFA Request  
15 Number 3, Mideast Marketing Area Deliveries of  
16 Producer Receipts from Illinois, Iowa, Minnesota  
17 and Wisconsin to Distributing Plants August  
18 through November 2004 gives a snapshot view of  
19 performance from these areas during the short  
20 season of 2004.

21       Performance from Illinois sources for the  
22 period were: August 7.8 percent, September 19.3  
23 percent, October 10.8 percent and November 10.8  
24 percent. From a combined, for confidentiality  
25 purposes, Minnesota and Iowa were 5.2, 13.9, 4.9

1 and 10.2 percents respectively for the same  
2 four-month period.

3 From Wisconsin, the largest out-of-area  
4 milk supply state, the performance was a very  
5 low 4.1 percent, 7.6 percent, 3.7 percent and  
6 4.1 percent for the period. Combined over the  
7 whole four state out-of-area milkshed, the  
8 performance was 6.4, 12.4, 6.3 and 7.0 percents  
9 respectively. Clearly, this market performance  
10 is well below the targeted levels that we have  
11 proposed.

12 Conversely, the remainder of the market,  
13 the geographic areas more historically  
14 associated with the marketing area, must be  
15 performing at a far higher level. The low  
16 out-of-area performance relative to the high  
17 volume of milk pooled has a cost to the PPD.  
18 This affects all producers in the pool. MA  
19 Exhibit 7, DFA Request Number 2, Estimated  
20 Impact of Distant Milk Pooled on the Mideast  
21 Order, offers a calculation of this impact at  
22 minimum Order levels only. This calculation  
23 assumes for the purposes of PPD impact that all  
24 pounds from the out-of-area milkshed were  
25 removed from the pool and the pool was

1 recalculated with different pound/location  
2 values instead. For the fall 2004 supply  
3 season, the PPD would have been higher by \$0.11,  
4 \$0.02, \$0.16 and \$0.03 per hundredweight. The  
5 remainder of the exhibit shows the impact for  
6 August 2003 through December 2004. Note that  
7 there is a residual impact on the PPD in the  
8 remaining months as the large volume of milk  
9 that is qualified during the fall months reduces  
10 the PPD by as much as \$0.40 per hundredweight  
11 since July 2004 in the remaining months. Also  
12 note that the months of positive effect were  
13 months when much of this milk supply was  
14 depooled.

15 JUDGE DAVENPORT: Mr. Gallagher,  
16 let's stop you at this point. In looking, it's  
17 about 3:00 at this point. Let's take a brief  
18 break. What's the pleasure of the group?

19 MR. BESHORE: Fifteen minutes?

20 JUDGE DAVENPORT: We will be in  
21 recess until 3:15.

22 (Thereupon, a recess was taken.)

23 JUDGE DAVENPORT: I think we're  
24 probably about ready to start again. Let the  
25 record reflect that we're again in session.

1                   THE WITNESS:           In order to further  
2 detail our concerns about distant milk and  
3 excess reserves, we requested that the Market  
4 Administrator subdivide the market into five  
5 supply and demand regions: Northern Ohio,  
6 Southern Ohio, Michigan, Indiana and  
7 Pennsylvania. These regions are described  
8 graphically and with the additional statistical  
9 detail on MA Exhibit 7, DFA Request Number 8(a)  
10 through (e). Data making up this exhibit is for  
11 October 2004.

12                   Exhibit 8(a) describes the Northern  
13 Ohio region, that is shaded. This region has  
14 seven pool distributing plants, Arps Dairy,  
15 Defiance, Ohio, Consun Foods, Elyria, Ohio,  
16 Oberlin Farms Dairy, Cleveland, Ohio, Reiter  
17 Dairy, Akron, Ohio, Smith Dairy, Orrville, Ohio,  
18 Sterling Milk Company, Wauseon, Ohio and  
19 Superior Dairy, Canton, Ohio. These plants have  
20 a combined Class I sales volume of 86.5 million  
21 pounds and there is 276.5 million pounds of milk  
22 produced in the counties within this region.

23                   With 276.5 million pounds produced  
24 and Class I demand of 86.5 million pounds, there  
25 is an adequate supply of milk from this region

1 to meet its Class I needs and also to supply  
2 milk to other regions as well. MA Exhibit 7,  
3 DFA Request Number 7, Mideast Market Area  
4 Producer Milk to Distributing Plants by Distance  
5 and Region, October 2004, breaks down the  
6 deliveries of the in-area milk to this region.  
7 This Exhibit includes milk delivered to each  
8 region's pool distributing plants from locations  
9 outside the marketing area, thus the average  
10 miles will be greater than if the schedule  
11 included in-area milk only. For the Northern  
12 Ohio region, there is enough milk produced  
13 within the region to meet the supply needs of  
14 its Class I plants. Additionally, the average  
15 distance milk moved from all sources to reach  
16 this region's distributing plants was 74 miles.

17 Exhibit 8(b) describes the Southern  
18 Ohio region, as shaded. This region has 8 pool  
19 distribution plants, Broughton Foods, Marietta,  
20 Ohio, H. Meyer Dairy, Cincinnati, Ohio, Reiter  
21 Dairy, Springfield, Ohio, Newark, Ohio, Louis  
22 Trauth Dairy, Newport, Kentucky, United Dairy,  
23 Inc., Martins Ferry and Cincinnati, Ohio and in  
24 Charleston, West Virginia. These plants have a  
25 combined Class I sales volume of 124.0 million

1 pounds and there are 50.9 million pounds of milk  
2 produced in this region. This is a deficit  
3 supply region. MA Exhibit 7, DFA Request Number  
4 7 shows that all of the milk produced in the  
5 region only meets 41 percent of the region's  
6 Class I needs, and for deliveries to  
7 distributing plants in the region from all  
8 sources in the region and outside of the region,  
9 milk is transported an average of 130 miles.

10 Exhibit 8(c) describes the Michigan  
11 region. This region has 12 pool distributing  
12 plants, Bareman Dairy, Holland, Michigan,  
13 Country Fresh, Flint, Livonia and Grand Rapids,  
14 Michigan, Guernsey Farms Dairy, Northville,  
15 Michigan, Inverness Dairy, Cheboygan, Michigan,  
16 Jilbert Dairy, Marquette, Michigan, Liberty  
17 Dairy, Ewart, Michigan, Michigan Dairy, LLC,  
18 Livonia, Michigan, Parmalat, Grant Rapids,  
19 Michigan, Prairie Farms Dairy, Inc., Battle  
20 Creek, Michigan and Quality Dairy Company,  
21 Lansing, Michigan. These plants have a combined  
22 Class I sales volume of 166.8 million pounds and  
23 there are 464.6 million pounds of milk produced  
24 in this region.

25 Here there is an adequate supply of

1 milk produced in this region to meet its Class I  
2 needs and also supply milk to other regions as  
3 well. This region is the major reserve supply  
4 area for the Mideast Market. MA Exhibit 7, DFA  
5 Request Number 7 breaks down the deliveries of  
6 in-area milk to this region. All the milk  
7 supply for this region's distributing plants  
8 could originate from the region and of the  
9 deliveries to distributing plants in the region,  
10 milk is transported an average of 71 miles.

11           Exhibit 8(d) describes the Indiana  
12 region. This region has 7 pool distributing  
13 plants, Dean Foods of Rochester, Indiana,  
14 Eastside Jersey Dairy, Anderson, Indiana, The  
15 Kroger Company, Indianapolis, Indiana, Pleasant  
16 View Dairy Corporation, Highland, Indiana,  
17 Prairie Farms Dairy, Inc., Ft. Wayne, Indiana,  
18 Schenkels All Star Dairy, Huntington, Indiana,  
19 and Smith Dairy Wayne Division, Inc., Richmond,  
20 Indiana. These plants have a combined Class I  
21 sales volume of 110.0 million pounds and there  
22 are 132.4 million pounds of milk produced in  
23 this region. There is an adequate supply of  
24 milk from this region to meet Class I needs, but  
25 little access to supply milk to other regions.

1 MA Exhibit 7, DFA Request Number 7 breaks down  
2 the deliveries of in-area milk to this region.  
3 All of the milk supply for this region's  
4 distributing plants could originate from the  
5 region and of the deliveries to its Class I  
6 plants, milk is transported an average of 103  
7 miles.

8           The Indiana region has a north/south  
9 divide relative to supply and demand. Much of  
10 the Class I demand is located in the southern  
11 two-thirds of the state, while the majority of  
12 the supply is in the northern third. If we had  
13 chosen to make a sixth region, Northern Indiana  
14 could well be a reserve supply area and Southern  
15 Indiana a deficit area.

16           Exhibit 8(e) describes the  
17 Pennsylvania region. This region is 7 pool  
18 distributing plants, Dean Dairy Products  
19 Company, Sharpsville, Pennsylvania, Carl  
20 Colteryahn Dairy, Pittsburgh, Pennsylvania,  
21 Marburger Farm Dairy, Erie, Pennsylvania,  
22 Schneider's Dairy, Pittsburgh, Pennsylvania,  
23 Turner Dairy Farms, Pittsburgh, Pennsylvania and  
24 the United Dairy, Uniontown, Pennsylvania.  
25 There's also a Dean's plant in Erie,

1 Pennsylvania. These plants have a combined  
2 Class I sales volume of 80.6 million pounds and  
3 there are 106.6 million pounds of milk produced  
4 in this region. There is an adequate supply of  
5 milk from this region to meet Class I needs, but  
6 little excess to supply milk to other regions.  
7 MA Exhibit 7, DFA Request Number 7 breaks down  
8 the deliveries of in-area milk to this region.  
9 All of the Class I milk supply for this region  
10 could originate from the region and of the  
11 deliveries to Class I plants in the region, milk  
12 is transported an average of 97 miles.

13 Combining all these regions in  
14 Exhibit 8 show for October 2004 there was  
15 1,031,089,121 pounds of pooled producer milk.  
16 This was more than enough to supply the  
17 568,026,459 pounds of Class I sales from Class I  
18 plants located in this region. Clearly, there  
19 exists an adequate supply and reserve from which  
20 to supply the Class I market. MA Exhibit 7, DFA  
21 Request Number 7 shows that milk travels an  
22 average distance of 93 miles to meet the Class I  
23 needs of the five regions.

24 MA Exhibit 7, DFA Request Number  
25 6(a), Total Mideast Producer Milk Delivered from

1 Farms Located in the Mideast Marketing Area to  
2 Distributing Plants, October 2004 and Number  
3 6(b), Total Mideast Producer Milk Delivered to  
4 Distributing Plants, October 2004 outlines  
5 deliveries to pool distributing plants from  
6 increments of 20 mile zones.

7           Exhibit 6(a) shows that 99.5 percent  
8 of the milk from in-area farms traveled less  
9 than 360 miles to deliver to distributing  
10 plants. Exhibit Number 7 summarizes the average  
11 miles for the entire market to be 93 miles.  
12 Exhibit 6(b) shows Class I deliveries for the  
13 entire market, not just for the in-area farms.  
14 From this it is shown that 97.6 percent of the  
15 deliveries to Class I plants originate from less  
16 than 360 miles away. This means that 2.4  
17 percent, or approximately 15 million pounds,  
18 come from distances of 360 miles or more at a  
19 considerably greater cost to transport.

20           Further confirmation that the  
21 out-of-area milk that delivers to the pool  
22 plants comes with high transport costs can be  
23 concluded from MA Exhibit 7, DFA Request Number  
24 1(b), Mideast Pounds of Producer Milk by State  
25 and County, Number 10, Mideast Differentials,

1 Number 16, Producer Milk Across Zones, Mideast  
2 Order, October 2004, and Number 17, Producer  
3 Milk Movement Across Zones, Mideast Order  
4 Average Hauling Distance, October 2004. From  
5 the differential map, Exhibit Number 10, it is  
6 shown that the \$1.75 zone is not in the  
7 marketing area. From the state and county  
8 production summary, Exhibit 1(b), the pounds of  
9 milk that is in the marketing area, but in a  
10 \$1.70 zone is limited to Houghton and Baranga  
11 counties in Michigan, with less than 750,000  
12 pounds of production per month.

13           From Exhibit Number 16, it can be  
14 seen that approximately 17 million pounds  
15 delivered to pool distributing plants from  
16 outside the marketing area, that's 6.8 million  
17 from farms in the \$1.70 zone and 10.2 million  
18 from farms from the \$1.75 zone, and from Exhibit  
19 17, from distances of 155 miles to 677 miles.  
20 Since approximately 10.6 million pounds from the  
21 \$1.70 and \$1.75 zones delivered to plants in the  
22 \$2 zone, most of the milk was hauled distances  
23 of 469 miles or more. Note that 469 miles is  
24 the lowest average delivery miles for production  
25 in the \$1.70 or \$1.75 zones for deliveries to

1 the \$2 zone as shown in Exhibit 17.

2                   DFA Exhibit 15, Table 5, Summary of  
3 Supplemental Milk Purchases, Dairy Farmers of  
4 America, October 2004 provides details about DFA  
5 purchases of supplemental milk supplies for  
6 October 2004. The pattern and data described  
7 here is typical for the fall, short supply  
8 season. As can be seen, DFA purchased 21.6  
9 million pounds of supplemental milk for delivery  
10 to Class I customers. The transportation cost  
11 averaged \$2.51 per loaded mile. Purchases were  
12 from Illinois, Michigan, Minnesota and Wisconsin  
13 and deliveries to Indiana, Ohio, and  
14 Pennsylvania. Assuming a 48,000-pound delivery,  
15 a \$2 and, I believe that's supposed to be -- a  
16 \$2.51 per loaded mile rate and 288 additional  
17 miles, Table 5 average of 381 miles minus  
18 Exhibit 7 average of 93, this milk costs an  
19 extra \$1.51, just for the transportation aspect.  
20 If less expensive supplies could have been  
21 obtained closer to the market at a lesser cost,  
22 DFA would have not have made these out-of-area  
23 supplemental purchases. DFA could not bid  
24 in-area milk supplies away from its  
25 manufacturing uses at prices less expensive than

1 the cost of importing milk, even though adequate  
2 in-area volumes did exist.

3           After consultation with counsel, the  
4 next one, two -- three paragraphs are deleted  
5 from our testimony and that not be made part of  
6 this exhibit, so we'll pick up on page 18 where  
7 it says, "Examination of MA Exhibit 7, DFA  
8 Request Number 11, Percent of Mideast Producer  
9 Milk Diverted to Nonpool Plants indicates that  
10 our proposal can achieve its desired effect.  
11 The provisions of Proposal 2 that affect plant  
12 shipments will obviously increase performance by  
13 their nature. Request Number 11 details  
14 diversion amounts subdivided by whether or not a  
15 handler is a pool distributing plant or a  
16 cooperative for each month of 2004. Clearly, in  
17 the shipping months of August through February  
18 handlers in both categories have diversions in  
19 excess of 50 percent. In order to meet Proposal  
20 2's requirement limiting diversions to no more  
21 than 50 percent, some handlers will have to ship  
22 more milk to pool distributing plants or pool  
23 less milk on the Order will yield a higher blend  
24 price for all of the producers.

25           MA Exhibit 7, DFA Request Number 21,

1 Estimated Impact on PPD at 10 Percent Reduction  
2 in Diversion Limitations, October 2004 further  
3 defines what we feel are the potential impacts  
4 from our proposal. At our request, the Market  
5 Administrator has made an estimate of both the  
6 pounds of milk that may either be available to  
7 ship to pool distributing plants or exit to  
8 pool. If the milk exits the pool, it would have  
9 a resulting positive impact on the PPD. This  
10 measure can only be viewed as a minimal  
11 calculation in terms of dollar impact. However,  
12 it is more significant in its volume measure.

13           The dollar calculation measures the  
14 PPD impact resulting from removing manufacturing  
15 milk from the pool and changes in the location  
16 value. For October, the PPD impact was \$0.02  
17 per hundredweight. However, the volume of milk  
18 that must now either ship or exit the pool was  
19 estimated to be 63.8 million pounds, very  
20 significant in light of the volume of  
21 supplemental milk that must be purchased for the  
22 Class I market's needs. If even half of this  
23 milk becomes available to the market at Order  
24 values, the resulting reduction in supplemental  
25 milk costs will be quite large as less money

1 will be spent in give up fees and transport  
2 costs.

3           The following conclusions can be  
4 drawn from this data. One, the record shows  
5 that there is a large quantity of Class I sales  
6 and adequate milk supplies in the Mideast  
7 Marketing Area. Much of the in-area milk is  
8 well situated to deliver to market. The Mideast  
9 Order, in spite of the performance enhancements  
10 made in the 2001 hearing, still has more  
11 reserves than can be reasonably justified and  
12 those reserves are not always available to the  
13 market when needed.

14           Number three, relative to year 2000,  
15 volumes of milk pooled on the market from states  
16 considered to be part of the traditional market  
17 supply have remained steady or declined slightly  
18 while milk production pooled from states not  
19 considered a part of the traditional market  
20 supply has increased dramatically. This  
21 increase in out-of-area pool pounds has not been  
22 accompanied by an increase in shipments to pool  
23 distributing plants from these areas. Number 4,  
24 the increase in non-performing volume from  
25 out-of-area sources, has a direct negative

1 impact on the Mideast Order PPD. Also, the  
2 small proportion of the milk that does perform  
3 does so at a significant cost to the market due  
4 to high freight costs needed to transport milk  
5 over very long distances.

6           Number five, the additional costs of  
7 procuring supplemental milk supplies are borne  
8 by only a portion of the market. Number six,  
9 the Order 33 pooling provisions do not correctly  
10 define what producers should share in the  
11 market's returns. Number seven, the proposals  
12 made by the Proponents are modest improvements  
13 over the status quo. They affect all suppliers  
14 equally in their construct by requiring similar  
15 increases in performance from all market supply  
16 sectors during the shipping months. Number  
17 eight, estimates made by the Market  
18 Administrator demonstrate that the proposals can  
19 have the designed impact. And number nine, in  
20 order to protect the blend price from milk  
21 supplies that do not exhibit adequate  
22 performance, Order provisions that enhance  
23 performance standards are needed. The market is  
24 in a difficult quandary. The solution is  
25 Proposal 2.

1                    Proposed Language to Enhance  
2 Performance Standards. All Federal Orders have  
3 performance standards. The reasons for their  
4 existence is uniform. However, the exact  
5 standards themselves are varied to meet the  
6 unique marketing conditions existing in each  
7 Order. To best fit the Mideast Order marketing  
8 conditions, the following language is offered.  
9 Amend Section 1033.7 by revising paragraphs (c),  
10 (d), (d)(2) and (e)(1), to read as follows:  
11 "Section 1033.7 Pool Plant, Section (c), A  
12 supply plant from which the quantity of bulk  
13 fluid milk products shipped to, received at, and  
14 physically unloaded into plants described in  
15 paragraph (a) or (b) of this section as a  
16 percent of the Grade A milk received at the  
17 plant from dairy farmers, except dairy farmers  
18 described in Section 1033.12(b) and handlers  
19 described in Section 1000.9(c), as reported in  
20 Section 1033.30(a) is not less than 40 percent  
21 of the milk received from dairy farmers,  
22 including milk diverted pursuant to Section  
23 1033.13, subject to the following conditions."  
24                    Our intent here is to increase the  
25 shipping percentage for milk delivered to the

1 market from supply plants by 10 percent. An  
2 increase is warranted; the hearing record  
3 demonstrates this. A modest increase will make  
4 more milk available to Class I market if the  
5 supply plant handler wishes to pool the same  
6 volume of milk. The increase will apply to all  
7 7(c) plant regardless of location or ownership.  
8 We propose no other section -- no other changes  
9 in this section.

10 "Section (d), A plant operated by a  
11 cooperative association if, during the months of  
12 August through November 40 percent and during  
13 the months of December through July 30 percent  
14 or more of the producer milk of members of the  
15 association is delivered to a distributing pool  
16 plant or plants or nonpool plant or plants and  
17 classification other than Class I is not  
18 requested. Deliveries for qualification  
19 purposes may be made directly from the farm or  
20 by transfer from such association's plant  
21 subject to the following conditions."

22 And then skip down to Section (2),  
23 "The 30 percent delivery requirement for  
24 December through July may be met for the current  
25 month or it may be met on the basis of

1 deliveries during the preceding 12-month period  
2 ending with the current month." Our intent here  
3 is to apply the same 10 percent increase to 7(d)  
4 supply plants as stated above, with one  
5 exception. Present Order provisions allow a  
6 cooperative owned plant to use a rolling annual  
7 average to meet the shipping requirements. Our  
8 proposed change requires a hard limit of 40  
9 percent shipments during the fall months and, if  
10 done, the rolling average concept can be used to  
11 meet the remaining months' requirements. This  
12 change retains the rolling average concept, but  
13 does raise the bar during the short shipping  
14 season.

15 "Section (e)(1), The aggregate  
16 monthly quantity applied by all parties to such  
17 an agreement as a percentage of the producer  
18 milk receipts included in the unit during the  
19 months of August through November is not less  
20 than 45 percent and during the months of  
21 December through July is not less than 35  
22 percent;" and the only change proposed to  
23 Section (e) is to raise the shipping standard by  
24 10 percent.

25 Amend Section 1033.13 by revising

1 paragraph (d)(4) to read as follows: "Section  
2 1033.13 producer milk, (d)(4), Of the total  
3 quantity of producer milk received during the  
4 month, including diversions but excluding the  
5 quantity of producer milk received from a  
6 handler described in Section 1000.9(c) or which  
7 is diverted to another pool plant, the handler  
8 diverted to nonpool plants not more than 50  
9 percent in each of the months of August through  
10 February and 60 percent in each of the months of  
11 March through July."

12           Finally, in Section 13(d)(4) we have  
13 also proposed a decrease in the diversion limit  
14 by 10 percent, which correspondingly increases  
15 shipping amounts by 10 percent. This change is  
16 intended to apply to all handlers in all months.

17           We did not propose any changes to the  
18 touch base standard. We did review that option,  
19 but felt that the increase in the shipping  
20 requirements was a better alternative. The  
21 opportunity to rotate producers to avoid real  
22 shipments rendered any touch base change moot.

23           The result of this language change is  
24 to increase the delivery standards for all  
25 handlers by 10 percent, with a slight deviation

1 for cooperative owned supply plants. In light  
2 of our data showing that market reserves are  
3 still excessive and blend prices too low, we  
4 think this modest change is warranted. We had  
5 requested higher levels than granted in the last  
6 performance hearing and can appreciate the  
7 position of the Secretary to make changes  
8 gradually, so now is the time to make the next  
9 change. Other proposals that have been made for  
10 this hearing also endorse improvements in the  
11 performance standards of the Order. No  
12 proposals have been offered to weaken them, and  
13 we think the Secretary should consider the fact  
14 that many of the Order's suppliers support the  
15 direction that our proposal is taking.

16           Proposal 7, Depooling. Proposal 7  
17 deals with the issue of depooling. While there  
18 is no official Order term for depooling, the  
19 industry generally understands it to mean the  
20 process of removing pounds of milk by class from  
21 the pool whenever the blend return is less than  
22 the corresponding class value to the pooling  
23 handler, and then re-associating the same milk  
24 in a later month with the pool when the return  
25 is above the class value. The pooling handler

1 retains the higher class value, but does not  
2 share the higher value in the Order pool and has  
3 more dollars available to pay its own milk -- to  
4 pay its milk supply than a handler that cannot  
5 depool. By definition, Class I milk must be and  
6 the value shared through the pool's blend price.  
7 This is a rational economic practice, but the  
8 consequences in a regulated environment are  
9 disorderly. Competing milk supplies do not have  
10 equal returns to pay producers for their milk  
11 deliveries.

12           The Mideast Order allows handlers to  
13 choose each month whether or not to opt to pool  
14 milk in Classes II and III and IV. If a handler  
15 chooses not to pool milk in a month under the  
16 Mideast Order or any Federal Order, the handler  
17 has the option in the following month to repool  
18 all of the prior month's depooled milk without  
19 any consequences. Most Federal Orders operate  
20 in this manner. A noted exception is the  
21 Northeast Federal Order where there are  
22 significant economic consequences for a handler  
23 that chooses to depool milk.

24           The term depooling and its occurrence  
25 is not a new or even a recent Federal Order

1 phenomenon. What is a recent phenomenon is the  
2 significant increase in price volatility that  
3 has led to more frequent occurrences of  
4 manufacturing and blend price inversions. As  
5 the volatility has occurred, it has created very  
6 high dollar value opportunities associated with  
7 depooling. This has created a critical need to  
8 change the Order system to address depooling.

9           While interviewing Elvin Hollon in  
10 preparing this testimony, he indicated that he  
11 performed depooling decision calculations for  
12 Order 30 for his employer in the 1980s and  
13 1990's, but remembers very few price deference  
14 of over \$2 per hundredweight range. In an  
15 exhibit prepared for the recent Order 30  
16 hearing, instances of negative PPDs for Order 68  
17 were presented. For the 84-month period from  
18 1993 to 1999, there were 16 months with negative  
19 producer price differentials. Only 6 of those  
20 occurrences were in excess of \$0.50 per  
21 hundredweight. Additionally, Elvin could not  
22 recall more than a few times that depooling  
23 decisions extended to what was then the Indiana,  
24 Michigan, Central or Southern Illinois Orders.  
25 He noted that it was in the mid to late 1990's

1 before the depooling decision making was regular  
2 outside of the Upper Midwest Orders.

3           Assuring an adequate supply of milk  
4 for the fluid market, equitably sharing the pool  
5 proceeds in an economically justifiable manner  
6 and promoting orderly marketing are among the  
7 basic purposes of the Federal Order program.  
8 Orderly marketing encompasses principles that  
9 assure that milk will be delivered to its  
10 highest value use when needed and that the  
11 reserve supplies will clear the market when not  
12 needed. Marketwide pooling allows qualified  
13 producers to share in the market returns on a  
14 fair and equitable basis. It also provides  
15 incentives to efficiently supply the market.  
16 Working in conjunction with classified pricing,  
17 these principles and requirements assure an  
18 adequate supply for the fluid market.

19           Information presented in the Order 32  
20 hearing showed that depooling opportunities have  
21 been present 51 times since the implementation  
22 of Federal Order reform. In calendar year 2000  
23 there were 6 opportunities, 3 to depool Class  
24 II, zero opportunities in Class III and 3  
25 opportunities to depool Class IV. In 2001 there

1 were 9 opportunities, 6 to depool Class II,  
2 there weren't any opportunities to depool in  
3 Class III and 3 opportunities to depool in Class  
4 IV. In 2002 there were 8 opportunities, all to  
5 depool in Class II. In 2003 there were 14  
6 opportunities, 10 to depool in Class II and 4 to  
7 depool in Class III. And in 2004 there have  
8 been 14 opportunities, 11 to depool in Class II,  
9 3 to depool in Class III and zero to depool in  
10 Class IV.

11 Depooling is a problem because it  
12 results in different returns for milk sales.  
13 Milk is only depooled when the result means more  
14 money for the handler who depools. Since by  
15 definition Class I milk cannot depool, the Class  
16 I sale is always disadvantaged when milk is  
17 depooled. The handler with Class I sales must  
18 draw from margins in order to pay a competitive  
19 pay price because its regulated return is less  
20 than that of the depooling handler. If it  
21 cannot or does not meet the depooled  
22 competition, the Class I handler risks losing  
23 its milk supply to a depooling handler. This  
24 results in handlers in common procurement areas  
25 facing widely different returns from the

1 regulated pricing scheme. This is the ultimate  
2 in irony, that the source of additional value to  
3 the pool, Class I milk, is unable to be  
4 competitive with other class sales due to  
5 depooling. If one of the purposes of the Order  
6 is to provide milk for Class I sales, then  
7 depooling thwarts that purpose and must be  
8 considered disorderly.

9           The magnitude in the difference of  
10 returns is large. DFA Exhibit 15, Table 2-E,  
11 Utilization and Statistical Uniform Blend Price  
12 Federal Order 1033 Calendar Year 2004 shows that  
13 for April a handler unable to depool was  
14 approximately \$3.78 per hundredweight behind in  
15 ability to pay versus a handler that was able to  
16 depool. For the supplier that delivered a  
17 tanker load of milk per day to a fluid bottler,  
18 that difference amounted to \$56,700 for the  
19 month. If it were 10 loads per day, the  
20 disadvantage was \$567,000 for the month.  
21 Differences of this magnitude would be  
22 insurmountable for any milk procurer. In May  
23 the depooling competitive difference was  
24 approximately \$1.59 per hundredweight. While  
25 much less than April, it is still a significant

1 amount. Expressed another way, in March 2004,  
2 1.3 million pounds of milk was pooled on the  
3 Mideast Order including 448.2 million pounds of  
4 Class III milk. In April, there was only 0.873  
5 billion pounds in the pool and 44.8 million  
6 pounds in Class III. In May the pool and Class  
7 III volumes were still abnormally low, but  
8 completely returned to full pool status in June.  
9 Much of the milk that shared in the Class I  
10 dollars generated by the Order in March opted  
11 out in April and May and returned in June to  
12 share again without any consequences.

13           Looking again to MA Exhibit 7, DFA  
14 Request Number 14, Mideast Class I Volume Versus  
15 Producer Value of Producer Milk Allocated to  
16 Class I, those who chose to depool in April left  
17 the pool when there was \$1.0 to share and  
18 returned to the pool in June when there was  
19 \$21.1 to share. In April the \$1 million was  
20 shared over 329 million pounds of non-Class I  
21 milk. However, by June there was almost 1.1  
22 billion pounds of non-Class I milk, an almost  
23 800 million pound increase from April, that  
24 shared in the \$21.1 million. Thus, the milk  
25 that did not depool was not able to collect more

1 when more was available to make up for the  
2 shortfall in April because more pounds opted to  
3 share in the total pool and blended down the per  
4 unit return in June. This situation must be  
5 remedied.

6 Producers in common procurement areas  
7 could also face widely differing returns due to  
8 depooling, a second sign of disorderly  
9 marketing. Several of our producer witnesses  
10 will attest to this fact.

11 MA Exhibit 7 DFA, Request Number 5,  
12 Milk Voluntarily Depooled on the Mideast Order,  
13 Estimated Impact on the Producer Price  
14 Differential, January 2003 to December 2004  
15 depicts the financial impact on the PPD from  
16 various levels of depooling Class II and III  
17 milk.

18 The data in the table shows that  
19 649.3 million pounds of milk were depooled in  
20 April 2004. This also shows that the producer  
21 price differential in the Cleveland zone was  
22 minus \$3.78. If the milk was not depooled, the  
23 producer price differential would have been  
24 minus \$2.12. Thus, the producer price  
25 differential would have been \$1.66 per

1 hundredweight higher without depooling, and as  
2 important all handlers in the marketing area  
3 would have had the same level of return from the  
4 pool.

5                   In December 2003, a month of a  
6 strongly positive producer price differential of  
7 \$1.39, milk was not depooled. If in December  
8 2003 milk had been depooled to the extent of  
9 April 2004's depoolings, the PPD would have been  
10 significantly more. In December 2003 the Order  
11 worked as designed and provided the economic  
12 signal and incentive for reserve supplies of  
13 milk to remain pooled on the Mideast Order.  
14 Clearly, the Order system was designed to share  
15 the December 2003 producer price differential  
16 value of \$1.39, with the reserve supplies being  
17 part of the pool.

18                   During 2003 and 2004, there were 15  
19 months, 63 percent of the time, that provisions  
20 of the Marketing Order malfunctioned by creating  
21 an economic incentive to depool milk from the  
22 Mideast pool, although in 8 of the months  
23 pooling had a nominal impact on the Order's  
24 producer price differential. The Order system  
25 should create economic incentives in the form of

1 economic penalties to encourage the continued  
2 pooling of the reserve milk supplies when  
3 manufacturing and blend price inversions do  
4 occur. That is the principle of marketwide  
5 pooling and part of the foundation of the  
6 Federal Order system. Changes in the Mideast  
7 Order are necessary to strengthen its  
8 foundation.

9           As can be evidenced from this same  
10 exhibit, the complete elimination of depooling  
11 will not eliminate negative producer price  
12 differentials. In 7 months during 2003 and 2004  
13 there still would have been negative producer  
14 price differentials. Again, this proceeding is  
15 not addressing the cause of negative producer  
16 price differentials, but our proposal will  
17 reduce the severity of the negative impact when  
18 it does occur and creates the incentive for the  
19 pool to share its returns among all producers on  
20 a more consistent basis.

21           Differing returns in the ability to  
22 pay of up to \$3.78 per hundredweight are  
23 disruptive, disorderly and greatly affect the  
24 ability to procure and maintain a milk supply  
25 for Class I customers. Being part of the

1 Federal Order pool should require a commitment  
2 to availability for Class I beyond that which  
3 unencumbered depooling involves.

4           Proposal to Limit Depooling. The  
5 proposal we offer is to limit the pounds a  
6 handler can pool each month to a volume lesser  
7 than or equal to 115 percent of what was pooled  
8 in the prior month. This proposal may be too  
9 severe for some handlers, and may not be strong  
10 enough for others in the marketing area.

11           In the development of Proposal 7, the  
12 Proponents reviewed the Order's pooling  
13 requirements. Among possible changes reviewed  
14 and discarded were changing the touch base to an  
15 every month requirement and instituting a  
16 producer for other markets provision similar to  
17 that existing in Federal Order 1 and as  
18 suggested in Proposals, 4, 5, and 8. Utilizing  
19 these options would have resulted in more  
20 changes, and in some cases more costly changes  
21 for Order 33 handlers than are warranted by  
22 existing marketing conditions.

23           Proposal 7 would limit how much milk  
24 a handler could add to the pool or repool each  
25 month. Milk pooled would be limited to 115

1 percent of the previous month's pooled volume  
2 with a few exceptions. This proposal will not  
3 eliminate depooling. However, it does create  
4 economic incentives to keep the reserve supply  
5 pooled on the Order by creating economic  
6 consequences steeped in uncertain future market  
7 conditions that in some months will prevent  
8 depooling and in other months will limit its  
9 use. If any handler depools under the current  
10 regulations, there are no long-term consequences  
11 right now. In fact, there are virtually no  
12 negative impacts for those who depool.

13           The level of this limitation was  
14 chosen after receiving information similar to  
15 that found in MA Exhibit 7, DFA Request 4,  
16 Monthly Change in Mideast Producer Receipts.  
17 This exhibit compares month-to-month changes in  
18 producer milk receipts for Order 33. If milk  
19 was depooled during the month, the Market  
20 Administrator added the amount into the monthly  
21 volume.

22           For instance, the April 2004 pool  
23 pounds of 1.5 billion includes 649 million  
24 pounds that were depooled. Using the 115  
25 percent factor, there does not appear to be a

1 month that would have prevented milk from being  
2 pooled due to a month-to-month seasonal  
3 production increase, or due to the ensuing month  
4 having more days. In fact, only two months show  
5 an increase with 5 percent of the -- within 5  
6 percent of the 115 percent factor. The 115  
7 percent limitation in our proposal should  
8 accommodate the normal market situation in the  
9 Mideast Order and allow for a reasonable amount  
10 of added volume in any given month.

11 MA Exhibit 7, DFA request 12,  
12 Hypothetical Depooling Allowed to Ensure Full  
13 Repooling Within Three Months with 115 Percent  
14 Repooling Limitation demonstrates the depooling  
15 is not eliminated by our proposal. This example  
16 shows that a handler could depool 34 percent of  
17 its milk and have it all re-qualified for the  
18 pool three months later. However, a handler  
19 choosing this option has to be fairly certain  
20 that the milk pricing environment for the  
21 ensuing months in which milk cannot be  
22 completely re-pooled creates a favorable  
23 financial outcome. In many cases, this will be  
24 a gamble at best. While not eliminating  
25 depooling, this is a modest and, in our mind

1 minds, reasonable position to take to control  
2 the problem.

3           Restricting the pooling of milk based  
4 on prior performance is not new to Federal  
5 Orders. The Northeast Order has had a producer  
6 for other markets provision for many years.  
7 Under this provision, milk of a producer cannot  
8 be immediately re-pooled if it has been depooled  
9 as is, in fact, excluded from the pool for an  
10 extended period of time. Proposal 2 would not  
11 impose such a burden on an individual producer,  
12 but limits pooling based on an aggregate total  
13 of the handler's previous month's pooled pounds.

14           Years ago other Orders primarily in  
15 the South and/or Southeast either had a producer  
16 for other markets provision or base plans to  
17 accomplish similar goals. In these markets, the  
18 intent of such provision was to limit the  
19 sharing of the marketwide pool during the spring  
20 months to those who pooled during the fall.

21           An additional benefit to our proposed  
22 limitation of pooling is that it would reduce or  
23 eliminate the possible need for an increase in  
24 the Market Administrator's administrative  
25 assessment fee. In Federal Order 33, depooling

1 has negatively impacted the MA budget. While  
2 the MA has not asked for an increase in the  
3 upper limit for the fee in order to assure that  
4 the Order can properly function and to do so  
5 with a reasonable budget, continued pressure  
6 from depooling may cause this to occur. With  
7 our proposal, pool volumes would be more stable.  
8 It is our view that there would be more milk  
9 continuously pooled and less need for an  
10 increase in fee. At the very least, with  
11 stability in the pool volumes, it would be  
12 easier for the Market Administrator to make  
13 staffing and other operational decisions  
14 benefiting all producers in the Order.

15           Those who wish to maintain the right  
16 to depool will observe the real solution to this  
17 problem is to change the manner in which Order  
18 prices are announced. We agree that if all  
19 Order prices were announced on the same day,  
20 there would almost never be a negative PPD and  
21 rarely any depooling. However, the Class I  
22 segment of the market desires advanced pricing,  
23 and we feel that having advanced pricing allows  
24 producers to obtain stronger prices.

25           The balancing sector of the market

1 desires after-the-month pricing because it must  
2 absorb the reserve supply of milk no matter what  
3 the ultimate underlying commodity price. Many  
4 times the balancing volumes are greatest when  
5 commodity prices are lowest. Balancing a milk  
6 supply is a low margin business. Being forced  
7 to manufacture milk supplies with milk prices in  
8 excess of commodity prices makes it even more  
9 unprofitable. Thus, no one wants to change  
10 their own price to fix the system, but eagerly  
11 suggests change for the other party. Order  
12 regulations must attempt to serve the entire  
13 market and are frequently the product of  
14 compromise. In this situation no one is willing  
15 to change. Thus, this proposed solution is not  
16 a real option.

17           Additionally, in every hearing held  
18 since Order Reform where pricing terms and/or  
19 depooling has been an issue, no proposal has  
20 been noticed, and we think none advanced, where  
21 the Class I sector has offered to give up  
22 advanced pricing nor the balancing sector to  
23 give up after-the-month pricing. If it were to  
24 be advanced, the hearing would have to be  
25 national in scope and not on an Order-by-Order

1 basis. Those who would advance this argument at  
2 this hearing have now had three opportunities to  
3 present an alternative proposal and no one has  
4 done so.

5 Others have asked why not seek a  
6 non-Order solution to this problem? However,  
7 those solutions are not always workable,  
8 consistent or of long lasting possibility.  
9 There is no way to recover the negative PPD  
10 value from the Federal Order. A handler that  
11 must pool is always at a disadvantage when there  
12 is a negative PPD. And when there's a positive  
13 PPD, the handler who pooled during the period of  
14 negative PPD immediately returns to share in the  
15 pool.

16 There has been a recent effort to  
17 recover the negative PPD through increased fluid  
18 market service charges. While admirable and  
19 welcomed by those who supply the fluid market,  
20 this effort is not sustainable over the  
21 long-term. The increased price may have  
22 contributed to the larger than normal decline in  
23 fluid milk sales in 2004. Also, the fluid  
24 plants where the negotiated fee was implemented  
25 were placed at a competitive disadvantage with

1 fluid plants in other areas where there was no  
2 increase.

3           For example, Central Milk Producers  
4 Cooperative and Upper Midwest Milk Marketing  
5 Agency, CMPC and UMMA, are pricing agencies  
6 composed of some of the cooperatives that supply  
7 milk for Class I use in the Upper Midwest. CMPC  
8 and UMMA put the increased service charge,  
9 negative PPD surcharge, in place for those  
10 plants that obtain milk from the CMPC and/or  
11 UMMA membership. Not all suppliers in Order 30  
12 were members of CMPC or UMMA. This adds to the  
13 difficulty of maintaining a negative PPD  
14 surcharge premium.

15           In Order 33 it was not possible to  
16 institute such a premium recovery because the  
17 competition for fluid milk sales was too  
18 geographically diverse and not all the handlers  
19 were willing to support such a constraint. The  
20 fluid plant cannot always recover this increased  
21 cost from the marketplace. Many of the longer  
22 term packaged milk supply arrangements with  
23 national and regional accounts have a price  
24 adjuster in the Federal Order cost of milk.  
25 There may not be any provision, however, for

1 changes in over Order prices. The fluid plant  
2 ends up eating this increase and the books could  
3 show red ink. This method is not a long-term  
4 workable solution.

5           There are other proposals that have  
6 been offered here and will be testified to later  
7 in the week. We discussed many of those  
8 proposals and feel that several of them may well  
9 work in principle, but are not the best solution  
10 for the Mideast Order.

11           The language we offer as the best  
12 solution is as follows: (e), The quantity of  
13 milk reported by handler pursuant to Section  
14 1033.30(a)(1) and/or Section 1033.30(c)(1) for  
15 the current month may not exceed 115 percent of  
16 the producer milk receipts pooled by the handler  
17 during the prior month. Milk diverted to  
18 nonpool plants reported in excess of this limit  
19 shall not be producer milk. Milk received at  
20 pool plants in excess of 115 percent limit,  
21 other than pool distributing plants, shall be  
22 classified pursuant to Section 1000.44(a)(3)(v).  
23 The handler must designate, by producer pickup,  
24 which milk should not be producer milk. If the  
25 handler fails to provide this information within

1 the provisions of Section 1033.13(d)(6) shall  
2 apply.

3           The following provisions apply: One,  
4 milk shipped to and physically received at pool  
5 distributing plants and allocated to Class I use  
6 in excess of the prior month's volume allocated  
7 to Class I shall not be subject to the 115  
8 percent limitation. Two, producer milk  
9 qualified pursuant to Section 1033.13 of any  
10 other Federal Order in the previous month shall  
11 not be included in the computation of the 115  
12 percent limitation, provided that the producers  
13 comprising the milk supply have been  
14 continuously pooled on any Federal Order for the  
15 entirety of the most recent three consecutive  
16 months.

17           Three, the Market Administrator may  
18 waive the 115 percent limitation Section (i) for  
19 a new handler on the Order, subject to the  
20 provision of Section 1033.13(e)(4), or (ii) for  
21 an existing handler with significantly changed  
22 milk supply conditions due to unusual  
23 circumstances. Four, milk may be considered  
24 ineligible for pooling if the Market  
25 Administrator determines the handlers

1 reported -- excuse me, if the Market  
2 Administrator determines that handlers altered  
3 the reporting of such milk for the purpose of  
4 evading the provision of this paragraph.

5           Section (e) sets out the total volume  
6 of milk that can be pooled this month is no more  
7 than 115 percent of what was pooled in the prior  
8 month. Any milk in excess of this volume will  
9 be removed from the pool. It is the handler's  
10 responsibility to designate which milk is not to  
11 be pooled if the limit is breached. Section  
12 (e)(1) directs that milk shipped directly to a  
13 distributing plant is exempt from the limit. In  
14 the extreme case of 100 percent depooling, a  
15 handler can always pool his deliveries directly  
16 to a distributing plant next month and also  
17 begin to earn pooling ability for subsequent  
18 months. Section (e)(2) allows milk that has  
19 been pooled on another Order to be exempted from  
20 the 115 percent limit so long as the milk has  
21 been continuously pooled for at least three  
22 months on some Order. This does not penalize  
23 the Mideast Order handler from being a  
24 supplemental supplier to another Order plant and  
25 also prevents a multiregional supplier from

1 selectively depooling and moving producers  
2 around between Orders to maximize depooling  
3 gains. Section (e)(3) and (4) allows the Market  
4 Administrator some discretion in administering  
5 the proposal to account for a new handler,  
6 drastic but explainable reasons for changes in a  
7 pooling volume and the ability to investigate  
8 and deny pooling for instances where some type  
9 of fraud or mal intent is discovered.

10           Note that we do not support allowing  
11 the Market Administrator any discretion in  
12 adjusting the 115 percent level as, for example  
13 allowed for in Section (7)(g) for the Order for  
14 supply plants. By allowing such an adjustment  
15 creates a concern that the Market Administrator  
16 will be called on too frequently to adjust the  
17 standard. If this occurred and changes were  
18 made, it would render its intent meaningless.  
19 If a change is warranted, the normal hearing or  
20 suspension process is available to accomplish  
21 this. In the future, if after some experience  
22 with these provisions show such discretion  
23 useful, then a future hearing can propose the  
24 change.

25           The areas we do allow discretion

1 clearly call for the requesting handler to  
2 provide all necessary proof and documentation  
3 needed to justify any proposed exception. It  
4 will be up to the requesting handler to show,  
5 for example, that increasing production from the  
6 same producer base did exceed the 115 percent  
7 level; that their business organization truly  
8 warrants being a new handler with no prior  
9 months base to measure from or that some  
10 combination of business assets truly results in  
11 a new handler entity. Additionally, it is not  
12 the intent of this provision to prevent a  
13 handler from adding new producers to its  
14 business. However, if those producers were  
15 added for the purposes of accommodating another  
16 handler who had depooled them, then the Market  
17 Administrator should investigate and possibly  
18 hold the handler to the 115 percent requirement.  
19 While we can never outline every possibility, we  
20 feel the Market Administrator does have the  
21 ability to investigate requests and make  
22 determinations.

23                   Transportation Credits. Proposal 9  
24 deals with transportation credits for supplying  
25 Class I markets. Congress authorized these

1 types of provisions in the Federal Milk  
2 Marketing Order system to help pay the costs of  
3 supplying milk to the Class I market among other  
4 reasons. In some sense it follows the economic  
5 concept of a public good in that all  
6 participants in the market benefit from Class I  
7 sales, but it is difficult to recoup the cost  
8 associated with the goods servicing the Class I  
9 demand from any individual in the entire market.  
10 Said another way, there are benefits derived  
11 from the market by all, but some do not pay the  
12 full cost associated with those benefits.

13 Congressional authorization provides  
14 for various services such as in-market  
15 transportation, surplus milk disposal and  
16 supplemental milk procurement. See 7 USC  
17 Section 608c(5)(J).

18 Other Orders authors these types of  
19 credits. For example, Federal Order 30 provides  
20 for an assembly credit paid to all suppliers of  
21 Class I milk. This credit has existed in this  
22 region's Order since 1987 and was continued and  
23 extended in the merged Order during Federal  
24 Order Reform. When promulgated, it was solely  
25 on plant milk. Federal Order Reform extended it

1 to direct ship milk as well.

2           Congressionally authorized marketwide  
3 services in the form of transportation credits  
4 also exist in the Appalachian and Southeast  
5 Orders, but in a different form than in the  
6 Upper Midwest Order. There, handlers pay an  
7 additional price to fund the transportation of  
8 milk into the market from out-of-area sources.  
9 At one time the pre-Reform Texas Order had a  
10 marketwide services payment in the form of a  
11 credit to assist in the disposal of surplus  
12 milk. In 2004, a hearing for the Central Order  
13 heard a proposal where the pool would fund a  
14 credit to offset the cost of moving milk to pool  
15 distributing plants for milk used in Class I.  
16 We offer a similar proposal today.

17           Issues in Order 33 and Why a  
18 Transportation Credit Will Help. DFA Exhibit  
19 15, Table 5, Summary of Supplemental Milk  
20 Purchases Dairy Farmers of America, October  
21 2004, provides details about supplemental milk  
22 purchases by DFA during October 2004. In  
23 October, DFA purchased 21,612,207 pounds of  
24 supplemental milk from the four out-of-area  
25 states for delivery to Class I customers in

1 Order 33. Others may have also made some  
2 purchases of supplemental milk for their  
3 customers, but this information details DFA's  
4 experience solely. Supply arrangements were  
5 coordinated through the Mideast Milk Marketing  
6 Agency, MEMMA, for efficiency of transport and  
7 purchase. This exhibit identifies transport  
8 cost alone. Every purchased load had additional  
9 costs associated with it. For all of these  
10 loads there was a give up or premium paid over  
11 the full Federal Order value. Some of the loads  
12 purchased were made on a multi-month contractual  
13 basis and some were spot market purchases. The  
14 fees above transport costs ranged from slightly  
15 below \$1.50 per hundredweight to over \$3 per  
16 hundredweight. Please note, though, that  
17 Proposal 9 does not contemplate any  
18 reimbursement for any fee other than a portion  
19 of the transportation cost, which is not  
20 currently being covered by the Order.

21           The milk was sourced from nine  
22 different suppliers in Michigan, Illinois,  
23 Minnesota and Wisconsin. These loads were  
24 delivered to a number of different customers in  
25 Indiana, Ohio and Pennsylvania. The table

1 identifies the following details: 1.6 million  
2 pounds of milk was purchased from Illinois  
3 suppliers and delivered to Ohio customers. On  
4 average, this milk supply was transported 593  
5 miles and had a cost of \$2.02 per loaded mile.  
6 0.7 million pounds of milk was purchased from  
7 Michigan suppliers and delivered to Ohio and  
8 Pennsylvania customers. On average, this milk  
9 supply was transported 278 miles and had a cost  
10 of \$2.35 per loaded mile. 19.3 million pounds  
11 of milk was purchased from Minnesota and  
12 Wisconsin suppliers and delivered to Indiana,  
13 Ohio and Pennsylvania customers. On average,  
14 this milk supply was transported 368 miles and  
15 had a cost of \$2.55 per loaded mile. For the  
16 entire milkshed, the range of average rates per  
17 loaded mile was \$2.37 for Ohio deliveries, \$2.54  
18 for Indiana deliveries and \$2.55 for  
19 Pennsylvania deliveries. The market average of  
20 \$2.51 is heavily influenced by the deliveries  
21 from Minnesota and Wisconsin. These charges,  
22 while taken from October business records, are  
23 typical for the entire fall short supply season.

24 MA Exhibit 15, FA Request Number 8(a)  
25 through (e), Mideast Marketing Area October

1 2004, the maps, helps to demonstrate that Order  
2 33 must move milk from reserve supplies in  
3 Michigan and Northern Ohio to the remainder of  
4 the market. The ratio of production to Class I  
5 use in the Michigan region shows that 64 percent  
6 of the supply is available for reserve supply  
7 for other regions, 464.6 million pounds of  
8 producer receipts minus 166.8 million pounds of  
9 Class I sales with the result divided by 464.6  
10 million pounds of producer receipts.

11           The same calculation for the Northern  
12 Ohio region produces a reserve supply ratio of  
13 69 percent. For the Pennsylvania region, the  
14 calculation is only 24 percent, barely enough  
15 reserve to service some of this region's needs.  
16 The Indiana region's ratio is 17 percent, again  
17 minimal. Due to the north/south divide in  
18 Indiana relative to production and sales, milk  
19 must be imported, and has been since the 1980's,  
20 from outside of Indiana to supply the sales in  
21 the southern half of the state. The Southern  
22 Ohio region is deficit 73.1 million pounds of  
23 milk to meet sales needed for October.

24           JUDGE DAVENPORT: Excuse me, that was  
25 Exhibit 7 as opposed to 15?

1                   THE WITNESS:        Yes, it is. Thank  
2 you. It was MA Exhibit 7, DFA Request 8(a)  
3 through (e). Supplemental milk movements from  
4 the in-area surplus regions to the regions  
5 requiring imports travel significant miles.  
6 Typical distances for movements from in-area  
7 reserve supplies in Central Michigan would be  
8 317 miles to Newark, Ohio, Kroger; 349 miles to  
9 Sharpsville, Pennsylvania, Dean; 365 miles to  
10 Newport, Kentucky; Trauth, and 303 miles to  
11 Akron, Ohio; Dean. For movements out of the  
12 reserve supply areas in Northern Ohio, distances  
13 would range from 86 miles in Newark, Ohio; 133  
14 miles to Sharpsville, Pennsylvania, and 200  
15 miles to Newport, Kentucky.

16                   The current Order's differentials do  
17 not pay for these milk movements. The zone  
18 layout in Order 33 is wide and flat and is  
19 reflective of the Cornell model used by USDA in  
20 establishing the Class I differential grid used  
21 under Federal Orders. Due to its current flat  
22 nature, the Order 33 zone structure does not  
23 offer enough incentive to attract or move milk  
24 to Class I locations within the market. While  
25 milk does cross zones to deliver to pool

1 distributing plants, the additional \$0.20 spread  
2 between each zone does not offer enough  
3 incentive to pay for the delivery.

4           This can be seen in MA Exhibit 7, DFA  
5 Request Numbers 16 and 17. Only 20 percent of  
6 the milk produced in the \$1.80 zone moves to  
7 plants in the \$2, \$2.10, \$2.20 or \$2.30 zones.  
8 A reason for this is the cost of moving the milk  
9 is far greater than the Order's zone adjustment.  
10 For example, the average hauling distance for  
11 \$1.80 zone produced milk delivered to the \$2.20  
12 zone is 215 miles. For a load with 48,000  
13 pounds of milk and a cost of \$2.20 per loaded  
14 mile, the additional cost of moving the milk is  
15 \$0.66 per hundredweight, calculated by 215 miles  
16 minus 71 miles, the 71 miles is the average  
17 hauling distance for deliveries in the \$1.80  
18 zone, times \$2.20 per loaded mile divided by 480  
19 hundredweight. This compares to the Order's  
20 zone incentive of moving the milk of \$0.40.

21           Since much of the in-area reserve is  
22 located in Michigan and Northern Ohio, we see an  
23 increasing need to transport milk from northern  
24 areas of the Order to the southern areas.  
25 Transportation credits tailored to transactional

1 events will help offset the cost associated with  
2 these movements. This failure of the Order to  
3 have a mechanism to assist Class I suppliers in  
4 covering these costs related to Class I markets  
5 places Class I suppliers at a competitive  
6 disadvantage in the field with pay prices  
7 relative to those milk supplies not heavily  
8 serving the Class I market. Yet all producers  
9 benefit equally via the pooled returns Class I  
10 generates.

11           The existing differential surface was  
12 established in Federal Order Reform in 2000.  
13 The underlying data and computations were based  
14 on 1996 with some update based on 1998  
15 information data and market conditions. Many  
16 changes in the marketing area have occurred  
17 since then. Several bottling plants have  
18 closed. Those that remain are larger and  
19 require more balancing. This means on the high  
20 demand days, suppliers must reach out more miles  
21 to obtain supplemental supplies and many times  
22 leap over the next closest milkshed because that  
23 supply is utilized by its closest demand point.  
24 Also, milk supplies in the Lake States region  
25 have diminished, causing increasing competition

1 for local milk supplies from both fluid use and  
2 manufacturing.

3           Costs to transport milk have  
4 increased since the differential surface was  
5 established. Some of these higher costs include  
6 labor, liability insurance and capital. Energy  
7 costs have increased, also. According to US  
8 Department of Energy sources, the 1999 Midwest  
9 annual average diesel fuel price was \$1.10 per  
10 gallon. The 2004 annual average was \$1.7679 or  
11 a 60 percent increase. DFA Exhibit 15, Chart 2,  
12 Diesel Fuel Price Midwest Monthly 1999 to Date  
13 portrays this increase. While prices are off  
14 their 2004 peak, they are still higher than any  
15 recorded price prior to mid-year 2004. The  
16 source of this can be found at  
17 [http://tonto.eia.doe.gov/oog/info/gdu/gasdiesel.](http://tonto.eia.doe.gov/oog/info/gdu/gasdiesel.asp)  
18 asp.

19           If the differential price surface was  
20 correct in 2000, based on 1996 and 1998 data, it  
21 would need some adjustment today. However,  
22 adjustments in the price surface are difficult  
23 to accomplish and are dealt with on a national  
24 instead of a regional basis. Building a record  
25 in that environment is difficult. There are

1 widely competing interests that may or may not  
2 have a direct bearing or concern on a local  
3 situation, like zone price relationships in the  
4 Mideast Order, but still attempt to influence  
5 the overall proceeding. Because changing the  
6 differential structure is so difficult, we  
7 choose instead to seek a transportation credit  
8 to offset some of the costs of supplying the  
9 local market and to ensure that all producers  
10 under the Orders share more equitably in the  
11 cost of this service.

12           Proposal 9 Mechanics. Establishing a  
13 milk price is part science and part art. The  
14 science portion is usually well supported by  
15 fact. The art portion is the interpretation of  
16 those facts that form opinions as how best to  
17 use the facts. Our data and evidence will  
18 combine both of these concepts and reflect our  
19 view of the marketing conditions.

20           Our proposal for a transportation  
21 credit structure establishes a rate, mileage,  
22 structure, appropriate application and safeguard  
23 factors. These factors would then be applied to  
24 the appropriate milk volumes each month at pool  
25 time. Please note we are making several

1 modifications to Proposal 9 as published in the  
2 hearing notice. These modifications are to the  
3 applicable rate and the mileage limitation.  
4 Included in the modification to the rate is a  
5 special rate application for milk movements  
6 within the State of Michigan, which will be  
7 described later by Mr. Rasch.

8                   Rate Factor. Our choice of payment  
9 rate is not \$0.0031 per mile. In the hearing --  
10 I'm sorry.

11 BY MR. BESHORE:

12 Q. Excuse me, Mr. Gallagher. It is?

13 A. It is now. That's right, sorry. Our  
14 choice of payment rate is now \$0.0031 per mile.  
15 In the hearing notice it was \$.0040 per mile.  
16 The new rate is based on a per mile hauling  
17 charge of \$2.20 divided by a 480 hundredweight  
18 payload set at 67 percent of the full rate and  
19 rounded to four places. DFA Exhibit 15, Table  
20 5, Summary of Supplemental Milk Purchases, Dairy  
21 Farmers of America, October 2004, described  
22 earlier in our testimony we detailed per mile  
23 costs of supplemental milk purchases from  
24 Illinois, Michigan and Wisconsin. Our rate  
25 choice of \$2.20 is below the market average of

1     \$2.51 and well below the average for Wisconsin  
2     of \$2.54 where much of the supplemental milk is  
3     sourced.

4             We have provided actual invoices from milk  
5     transport companies and summarized them on DFA  
6     Exhibit 15, Table 6. This table shows a wide  
7     range of invoices which would support the \$2.20  
8     as a reasonable choice. These invoices taken  
9     from fall months and for supplemental milk  
10    purchases from already detailed supply areas,  
11    represent transport hauls from 5 to more than 25  
12    loads of milk, enough to be representative of  
13    typical. We chose a 48,000-pound payload as  
14    representative of a wide range of market  
15    alternatives. Certainly over-the-road tanker  
16    hauls are for slightly larger volumes, but many  
17    of these routes originate from farm loads that  
18    are not always the largest tanker size.

19            In the Hurricane Relief Hearing held for  
20    the three Southeast Orders last fall to provide  
21    compensation for extraordinary hauling costs  
22    that resulted from four hurricanes striking the  
23    southeast US over a short period, hauling rates  
24    were put into the record that exceeded \$2.20 per  
25    mile. There, Proponents requested, as a

1 safeguard, payments from the fund would be  
2 limited to not more than \$2.25 per loaded mile  
3 even if documentation could be provided to  
4 justify a higher cost.

5 Finally, we reduce the \$2.20 divided by 480  
6 hundredweight by 33 percent, multiplying this by  
7 67 percent, to keep within the concept of Order  
8 pricing as a minimum level standard. By  
9 allowing for some Market Administrator  
10 discretion, which will be detailed later, we  
11 think this is a reasonable level even though in  
12 other proceedings a lower percentage than actual  
13 has been presented.

14 Mileage Factor. For the mileage exemption  
15 factor, we suggest that the first 75 miles be  
16 excluded from the mileage used in calculating  
17 the credit. This would represent individual  
18 producer responsibility for transportation. The  
19 75 mile limit was selected using the following  
20 concepts: One, relative to the marketing  
21 dynamics of Order 33, it is reasonable to  
22 include some level of producer responsibility  
23 for transporting Class I milk to market. Two,  
24 MA Exhibit 7, DFA Request Number 7, Mideast  
25 Marketing Area Producer Milk to Distributing

1 Plants by Distance and Region, October 2004,  
2 described in more detail earlier in our  
3 testimony, outlines transport distances from  
4 production point to distributing plant for  
5 October 2004. The last row of data signified by  
6 distributing plant within a specified region  
7 traveled. For instance, milk delivered to  
8 distributing plants in Northern Ohio traveled an  
9 average distance of 74 miles. The MA exhibit  
10 shows that the average distance for the two  
11 reserve supply regions, Michigan and Northern  
12 Ohio, are 71 and 74 miles respectively. The  
13 average transport difference for the other  
14 regions are Southern Ohio, a deficit region, 130  
15 miles, Indiana, a break even region, 103 miles,  
16 and Pennsylvania, a break even region, 97 miles.  
17 The entire market has an average of 93 miles of  
18 transport haul. We chose 75 miles as a level  
19 that is closest to the mileage in the reserve  
20 supply regions. Those areas will provide the  
21 most supply to other areas, and in order to  
22 benefit from the credit concept will need a  
23 mileage level that reflects closely the  
24 conditions in their area. Also, this level of  
25 credit will provide benefit to the more deficit

1 areas and help to offset the cost of supplying  
2 those markets. Three, DFA Table 7 -- DFA  
3 Exhibit 13, Table 7, Summary of Mileage Ranges  
4 from Market Administrator Data, October 2004  
5 further defines MA Exhibit Number 7 by  
6 accumulating -- MA Exhibit Number 7, Number 7,  
7 by accumulating the mileages up to the 80 mile  
8 zone, which would include over 75 -- which would  
9 include our 75 mile threshold and examining what  
10 portion of the milk falls into the exempt  
11 category. The table sums milk by zone up to the  
12 80 mile limit, subtracts that sum from the total  
13 milk in each region and expresses the up to 80  
14 miles as a percent of the total. The data  
15 demonstrates that the 75 mile threshold may  
16 provide benefit to approximately 41 percent of  
17 the total market's deliveries if they meet the  
18 credit criteria. This calculation ranges from a  
19 lower level of 20 percent in the Northern Ohio  
20 region where supplies are more available to  
21 nearly 70 percent in the more deficit Southern  
22 Ohio region. Four, we also chose to put a cap  
23 on the miles that could apply through  
24 transportation credit. Please note the cap is  
25 now 350 miles, meaning the mileage factor used

1 in calculating the credit will not be more than  
2 350 miles. The original notice had this  
3 limitation at 400 miles. For instance, if  
4 out-of-area milk is delivered from a distance of  
5 400 miles, the transportation credit calculation  
6 will only use 275 miles; 350 miles, minus 75  
7 miles. We chose this level after examining MA  
8 Exhibit 7, DFA Request Number 6(b). This  
9 exhibit shows that 350 miles covers 97.5 percent  
10 of the market's milk movements. We believe this  
11 is a reasonable safeguard for the proposal.  
12 Also, our examination of the delivery mileages  
13 to various demand points in the market  
14 demonstrated that adequate supplies could, in  
15 most cases, be obtained from 350 miles or less.

16       Applicability of Credit. The credit should  
17 only apply to milk delivered from farms to pool  
18 distributing plants receiving a Class I  
19 allocation. The credit should be paid to the  
20 operator of the pool distributing plant or a  
21 qualified cooperative who is the responsible  
22 party for delivering such milk and which  
23 provides appropriate documentation of such to  
24 the Market Administrator.

25       Market Administrator Discretion. Our

1 proposal allows the Market Administrator to  
2 periodically investigate the data that may  
3 affect either the rate or mileage factors and  
4 make changes in either factor if warranted.  
5 That investigation may include examination of  
6 the distances in the marketplace that milk is  
7 hauled to pool distributing plants, the charges  
8 for milk hauling, fuel costs, milk transport  
9 equipment costs and the sources of milk supplies  
10 to the market. By allowing for MA discretion,  
11 we feel comfortable in requesting a rate of cost  
12 recovery of 67 percent. Fuel costs are variable  
13 and could impact aspects of the formula. Giving  
14 of the MA some discretionary oversight will  
15 allow the formula to be adjusted appropriately  
16 if it is deemed necessary. Also, if milk  
17 production continues to decline in the primary  
18 supply areas of the market, it would be a normal  
19 response for transport distances to increase.  
20 As a consequence, the mileage limitations could  
21 be re-examined.

22 Our listing of possible discretionary items  
23 is not meant to be complete or exhaustive as  
24 additional factors may become apparent after the  
25 credit is in place. Our goal is to have the

1 Market Administrator make the industry aware of  
2 market conditions on at least an annual basis  
3 and have the authority to change the rate or  
4 mileage factors if conditions and industry  
5 sentiment warrant a change. This process could  
6 be similar to the process that the California  
7 Department of Food and Agriculture follows with  
8 its manufacturing cost surveys. It fathers and  
9 publishes information with input from the  
10 industry, but doing so does not cause any  
11 automatic change in regulation. We want to  
12 utilize the MA discretion process in a limited  
13 fashion here to avoid the longer hearing  
14 process.

15       Modification for Michigan Deliveries.  
16 Because the unique highway weight limits in  
17 Michigan allow for significantly higher tank  
18 weights than any other state in the Mideast  
19 Marketing area, a modification of our proposal,  
20 not contemplated prior to the hearing, is  
21 necessary. For loads that originate in Michigan  
22 and deliver to a pool distributing plant in  
23 Michigan, a lower rate for the credit formula is  
24 necessary in order to avoid overcompensation.  
25 Carl Rasch of Michigan Milk will testify to this

1 modification.

2           Effects on the PPD. MA Exhibit 7, DFA  
3 Request Number 15, Proposed Mideast  
4 Transportation Credits Selected Rates by Region,  
5 October 2004 demonstrate the effect of our  
6 proposal on the milk movements that existed in  
7 October. Note the modification proposed for  
8 Michigan was not considered when this request  
9 was made, although we do have the Michigan Milk  
10 Proposal -- or Michigan Milk exhibit that has  
11 that calculation, and that is Exhibit Number 8.

12           At the time of the request we did not have  
13 an exact rate or mileage factor determined so we  
14 asked for several combinations to be examined.  
15 The computation method summarized in this  
16 Exhibit is as we proposed. In each case, the  
17 Market Administrator had the necessary data to  
18 apply for the correct -- to apply the correct  
19 Class I percentage at each plant. In each  
20 request, the computations are made for per  
21 hundredweight/per mile rates of \$0.0035 and  
22 \$0.0040. Using the Michigan Milk Exhibit Number  
23 8, the exempt mileage -- the mileage factors  
24 exempt the first 75 miles, and I'm only going to  
25 refer to that exhibit, and assume a cap of 350

1 miles. Since our proposal is for a rate of  
2 \$0.0031 with a 75 mile exemption and a 350 mile  
3 cap, the best-fit comparison is the very first  
4 column on Michigan Milk Exhibit Number 8, the  
5 one showing the dollar values for the \$.0030  
6 credit. This table shows that for October 2004  
7 our proposal would have resulted in credits to  
8 Class I suppliers of \$413,698. The effect on  
9 this -- on the blend price would have been a  
10 reduction of approximately, and I don't have my  
11 calculator, but it would have been less than  
12 \$0.03 a hundredweight. But just substitute --  
13 right at \$459,081, just substitute \$413,698 in  
14 the calculation and that will be made.

15 MA Exhibit 7, DFA Request Number 19, Sample  
16 Computation of the Mideast Transportation Credit  
17 outlines each step of the credit calculation for  
18 several different delivery scenarios. We agree  
19 with the explanation of each of the various  
20 scenarios.

21 Proposal Language for a Direct Ship  
22 Transportation Credit. One, insert a new  
23 Section 1033.55 to read as follows: 1033.55  
24 Transportation Credits. A, each handler  
25 operating a pool distributing plant described in

1 Section 1033.7(a) or (b) that receives milk from  
2 dairy farmers, and each handler described in  
3 Section 1033.9(c) that delivers milk to a pool  
4 distributing plant described in Section  
5 1033.7(a) or (b) shall receive a transportation  
6 credit on the portion of such milk eligible for  
7 the credit pursuant to paragraph (b) of this  
8 section. One, transportation credits paid  
9 pursuant to paragraph (a)(1) or (2) of this  
10 section shall be subject to final verification  
11 by the Market Administrator pursuant to Section  
12 1000.77. Sub 2, in the event that a qualified  
13 cooperative association is the responsible party  
14 for whose account such milk is received and  
15 written documentation of this fact is provided  
16 to the Market Administrator pursuant to Section  
17 1033.30(c)(3) prior to the date payment is due,  
18 the transportation credits for such milk  
19 computed pursuant to this section shall be made  
20 to such cooperative association rather than to  
21 the operator of the pool plant at which the milk  
22 was received. B, Transportation credits shall  
23 apply to the pounds of bulk milk received  
24 directly from the farms of producers at pool  
25 distributing plants determined as follows: One,

1 determine the total pounds of producer milk  
2 physically received at the pool distributing  
3 plant. Two, Subtract from the pounds of milk  
4 described in paragraphs (b)(1) of this section  
5 the pounds of bulk milk transferred or diverted  
6 from the pool plant receiving the milk if milk  
7 was transferred or diverted to a nonpool plant  
8 on the same calendar day that the milk was  
9 received. For this purpose, the transferred or  
10 diverted milk shall be subtracted from the most  
11 distant load of milk received, and then in  
12 sequence with the next most distant load until  
13 all of the transfers have been offset; and 3,  
14 multiply the pounds determined in (b)(2) by the  
15 Class I utilization of all producer milk at the  
16 pool plant operator as described in Section  
17 1000.44. The resulting pounds are the pounds  
18 upon which transportation credits, as determined  
19 in paragraph (c) of this section, shall be  
20 applicable.

21 The language in Sections (a) and (b)  
22 authorizes the calculation and payment of the  
23 transportation credit. The calculation, while  
24 paid based on filings by handlers at pool time,  
25 is subjected to an audit by the Market

1 Administrator at a later date. If a cooperative  
2 can demonstrate satisfactorily to the Market  
3 Administrator that it was responsible for  
4 delivering milk to their account, the  
5 cooperative can receive the payment.

6       The language in Section (b) allows for  
7 payments to be made for Class I milk only and  
8 only for milk physically received at a pool  
9 distributing plant directly from a farm. This  
10 section further directs the Market Administrator  
11 to perform a net calculation so that milk is not  
12 trans-shipped through a plant for purpose of  
13 obtaining credit. This calculation is measured  
14 daily from records supplied by the Market  
15 Administrator. The calculations for net and for  
16 Class I percentage are to be made prior to any  
17 calculation of the credit amount. We envision  
18 that each handler would apply for credits at  
19 pool time, submit the request and supporting  
20 data with its market report and receive payment.  
21 All submissions would be subject to further  
22 verification and adjustment by the Market  
23 Administrator.

24       C, transportation credits -- back to the  
25 language, C, transportation credits shall be

1 computed as follows: One, determine an  
2 origination point for each load of milk by  
3 locating the county seat of the closest  
4 producer's farm from which milk was picked up  
5 for delivery to the receiving pool plant. Two,  
6 determine the shortest hard surface highway  
7 distance between the receiving pool plant and  
8 the origination point. Three, subtract 75 miles  
9 from the lesser of the mileage so determined in  
10 paragraph (c)(2) or 350 miles. Please note that  
11 (c)(4) was omitted from the hearing notice, so  
12 I'm going right to (c)(5). Multiply the  
13 remaining miles so computed by \$0.31 or \$0.0031  
14 dollars. Subtract the Class I differential  
15 specified in Section 1000.52 applicable for the  
16 county in which the origination point is located  
17 from the Class I differential applicable at the  
18 receiving pool plant's location. Seven,  
19 subtract any positive difference computed in  
20 paragraph (c)(6) of this section from the amount  
21 computed in paragraph (c)(5) of this section,  
22 and eight, multiply any positive remainder  
23 computed in paragraph (c)(7) by the  
24 hundredweight of milk described in paragraph  
25 (b)(3) of this section.

1 Paragraph C describes the actual credit  
2 calculation. The origin point for mileage is  
3 the county seat of the producer's farm on the  
4 route that is the closest location to the pool  
5 distributing plant. This combination was chosen  
6 to minimize the data needs necessary to process  
7 the credit computation. The measuring point of  
8 the closest farm was chosen to minimize the  
9 opportunity to structure a delivery to game the  
10 system. Maintaining this data will require much  
11 effort initially, but after a database of  
12 producer/county/plant locations is established  
13 between the industry and the Market  
14 Administrator, upkeep and transmission of  
15 information should be easy.

16 The remaining computation is as follows:  
17 Miles less 75, this represents the producer  
18 responsibility for haul. Two, no payment is  
19 made on mileages in excess of 350 miles. Three,  
20 remaining miles times \$.0031, this represents  
21 the cost per hundredweight per mile. And four,  
22 subtract any positive difference between the  
23 Class I differential at the pool distributing  
24 plant less the Class I differential of the  
25 county from which the farm location was

1 determined, this allows for the effect of the  
2 Order location differential to be recognized.  
3 If the difference is negative, it should be  
4 ignored. We assume any milk that moves against  
5 the zone does so because that is the best  
6 economic choice and should not be penalized by  
7 the credit computation. And five, pay the  
8 calculated dollars to the appropriate party.

9 Back to the Order language, (d), the rate  
10 and mileage limits of paragraphs (c)(4) and (5)  
11 of this section may be increased --

12 BY MR. BESHORE:

13 Q. Excuse me. Mr. Gallagher, should that  
14 refer to (c)(3) and (5) since there is no  
15 published (c)(4)?

16 A. You mean one through five I just read?

17 Q. The rate and mileage limits of paragraph  
18 (c)(3) and (5). There is no -- it should say  
19 (c)(3) and (5) rather than (4) and (5) since  
20 there's no published (c)(4), correct?

21 A. Correct. What was in the proposal? Was it  
22 (3) and (5) in the proposal? Well, whatever it  
23 was, it should be (3) and (5).

24 Q. Well, whatever it was, it should be (3) and  
25 (5).

1 A. Yeah.

2 Q. Okay?

3 A. Back to the Order language after the  
4 correction. (d), the rate and mileage limits of  
5 paragraphs (c)(3) and (5) of this section may be  
6 increased or decreased by the Market  
7 Administrator if the Market Administrator finds  
8 that such adjustment is necessary to better  
9 reflect actual conditions present in the  
10 marketplace. Before making such a finding, the  
11 Market Administrator shall investigate the need  
12 for adjustment either on the Market  
13 Administrator's own initiative or at the request  
14 of interested parties. If the investigation  
15 shows that an adjustment might be appropriate,  
16 the Market Administrator shall issue a notice  
17 stating that an adjustment is being considered  
18 and invite data, views and arguments. Any  
19 decision to revise either figure must be issued  
20 in writing at least one day before the effective  
21 date.

22 Paragraph (d) allows the Market  
23 Administrator's discretion in changing both the  
24 rate and mileage factors. Back to the Order  
25 language. (e), for purposes of this section,

1 the distances to be computed shall be determined  
2 by the Market Administrator using the shortest  
3 available state and/or Federal highway mileage.  
4 Mileage determinations are subjected to  
5 redetermination at all times. In the event a  
6 handler requests a redetermination of the  
7 mileage pertaining to any plant, the Market  
8 Administrator shall notify the handler of such  
9 redetermination within 30 days after the receipt  
10 of such request. Any financial obligation  
11 resulting from a change in mileage shall not be  
12 retroactive for any periods prior to the  
13 redetermination by the Market Administrator.

14 This section provides authority for the  
15 Market Administrator to periodically review  
16 mileage factors and make changes, if necessary.  
17 However, no change can be retroactively applied.

18 Back to the Order. 2, amend Section  
19 1033.60 by amending the introductory paragraph  
20 and adding a new paragraph (k) to read as  
21 follows: Section 1033.60 Handler's Value of  
22 Milk. For the purpose of computing a handler's  
23 obligation for producer milk, the Market  
24 Administrator shall determine for each month the  
25 value of milk of each handler with respect to

1 each of the handler's pool plants and of each  
2 handler described in Section 1000.9(c) with  
3 respect to milk that was not received at a pool  
4 plant by adding the amounts computed in  
5 paragraphs (a) through (i) of this section and  
6 subtracting from that total amount the value  
7 computed in paragraphs (j) and (k) of this  
8 section. Unless otherwise specified, the skim  
9 milk, butterfat and the combined pounds of skim  
10 milk and butterfat referred to in this section  
11 shall result from the steps set forth in Section  
12 1000.44(a), (b) and (c) respectively, and the  
13 nonfat components of producer milk in each class  
14 shall be based upon the proportion of such  
15 components in producer skim milk. Receipts of  
16 non-fluid milk products that are distributed as  
17 labeled reconstituted milk for which payments  
18 are made to the producer-settlement fund of  
19 another Federal Order under Section  
20 1000.76(a)(4) or (d) shall be excluded from  
21 pricing under this section.

22 (k), compute the amount of credits  
23 applicable pursuant to Section 1033.55. This  
24 section causes the corresponding changes to be  
25 made to Section 60.

1           In summary, we request that Order 33  
2   incorporate provisions dealing with dual pooling  
3   as a protection against dilution of the blend  
4   from milk that does not demonstrate real  
5   performance in the market. These provisions  
6   have been incorporated or about to be  
7   incorporated in Order 1, 30, 32, 124 and 131 and  
8   are requested in Orders 5 and 7. If instituted  
9   as written, it will prevent milk from  
10  simultaneously pooling in a Federal Order and a  
11  State Order with a marketwide pool.

12           Secondly, Proposal 2 to enhance the  
13  performance standards should be adapted.  
14  Similar changes were requested in 2001. The  
15  market needs further adjustment. While Order 33  
16  needs to import some supplemental milk, the  
17  current standards allow far more milk to  
18  associate with those supplemental purchases than  
19  is warranted. Additionally, Proposal 2 will  
20  cause more milk to be made available from local  
21  sources or exit the pool which will increase  
22  blend returns for every day shippers. The  
23  proposal treats all suppliers equally as similar  
24  increases in standards apply to each pooling  
25  handler. The evidence indicates that the Order

1 blend price is inadequate to pay for  
2 supplemental supplies from outside the Order,  
3 attract milk away from local sources and  
4 maintain supplies when faced with competition  
5 for milk from Order 5 to the south. This  
6 proposal is consistent with the Secretary's  
7 approach of making gradual changes toward more  
8 stringent performance provisions.

9 Third, Proposal 7 will curb the practice of  
10 depooling. Depooling is disorderly, causes  
11 market disruption and makes it difficult to  
12 attract the milk supply for Class I use. This  
13 proposal is consistent with those made elsewhere  
14 in the Order system. Although different in  
15 form, its regulatory purpose would be very  
16 similar to the Dairy Farmer for Other Markets  
17 provisions of Order 1, which significantly  
18 mitigates the incidents of depooling there.  
19 Finally, it is a key component in an effort to  
20 establish reasonable performance standards in  
21 the Order for in-area and out-of-area milk  
22 supplies.

23 And lastly, Proposal 9 requests a  
24 Congressionally authorized payment in the form  
25 of a transportation credit to assist those who

1 supply the Class I market and who are incurring  
2 extra cost in doing so. The evidence  
3 demonstrates that the market has a significant  
4 cost in transportation. The cost of the  
5 movement of milk beyond the producer  
6 responsibility is substantial. This request  
7 asks for a portion of that cost to be  
8 reimbursed. The proposal is backed by data that  
9 shows it to be targeted, effective, modest and  
10 workable. Evidence has been presented to  
11 substantiate a rate, mileage limits and  
12 safeguards to the system.

13       Need for Emergency Provisions. There is a  
14 need for this hearing to proceed on an emergency  
15 basis. One, the issues with depooling will be a  
16 problem in the market. Volatile markets know no  
17 season. With commodity prices experiencing a  
18 recent spike, negative PPDs may again appear in  
19 the near future. Since, the Order 30 -- at  
20 least for February. Since, the Order 30 and 32  
21 hearings, negative PPDs and depooling  
22 opportunities have again occurred. Concerns  
23 with performance standards also have a very  
24 short-term time horizon. The fall shipping  
25 season will be here soon and it would be helpful

1 to have a decision prior to that time so that  
2 Order provisions will not be an unknown factor  
3 in any planning.

4 History shows that California and milk from  
5 the Mountain states moved very easily through  
6 the Order system, shifting from one market to  
7 the next as regulation changed. Producers in  
8 Order 33 have no desire to experience the blend  
9 damage that occurred in Order 30 and emergency  
10 action will greatly help. Finally, the longer a  
11 record takes to process, the more problematic  
12 the prospects of varying solutions become.

13 On behalf of DFA, Michigan Milk, Dairylea  
14 and NFO, I would like to thank you for your  
15 time. The efforts of the Mideast Order staff in  
16 preparing the data for this hearing is greatly  
17 appreciated. You have a well-deserved  
18 reputation of being proactive and user friendly  
19 and that reputation was only magnified in their  
20 effort to produce data and information used here  
21 this week.

22 MR. BESHORE: Thank you,  
23 Mr. Gallagher. At this time, Your Honor, before  
24 I have just a couple of follow-up questions on  
25 the record for Mr. Gallagher, I would like to

1 request that official notice be taken of the  
2 decisions of the Secretary enumerated on page 4  
3 of Exhibit 14.

4 JUDGE DAVENPORT: So noticed.

5 MR. BESHORE: Thank you. And I  
6 would also like to offer into evidence Exhibit  
7 14 and Exhibit 15 with the exception of Tables  
8 4A through E which are withdrawn at this time.

9 JUDGE DAVENPORT: There is also --  
10 there's three or four paragraphs on pages 17 and  
11 18 that you've also withdrawn.

12 MR. BESHORE: That is correct.  
13 Those pages -- those portions of Exhibit 14  
14 where Mr. Gallagher noted are withdrawn.

15 JUDGE DAVENPORT: Any objections as  
16 to admissibility? There being none, they'll be  
17 admitted.

18 MR. BESHORE: Thank you.

19 BY MR. BESHORE:

20 Q. Now, just a couple of final questions,  
21 Mr. Gallagher. There's been -- you just made  
22 recent mention to possible PPDs in February and  
23 what an impact that may have. And the most  
24 current information we have with respect to  
25 these kinds of circumstances in the Order, what

1 can you tell us about that?

2 A. I believe that for February there is a  
3 strong likelihood of a low PPD in the Cleveland  
4 zone, but positive PPD, but when you get to the  
5 outer zones, particularly the zones that we  
6 would characterize as being out of the marketing  
7 area, there's likely to be a negative PPD for  
8 those zones.

9 Q. Do you anticipate that that would lead to  
10 depooling of milk that had been pooled?

11 A. I would expect that to occur.

12 Q. Now, there's been some questions, in fact,  
13 I asked Ms. Uther about this, but these are  
14 things that you do every day and I wonder if you  
15 could just elaborate, make it clear on the  
16 record what we mean when we talk about touch  
17 base and maintaining an association with the  
18 market. How those things work and how they're  
19 different?

20 A. Okay. You want me to just describe it?

21 Q. Yes, please.

22 A. Okay. "Touch base" is the actual process  
23 of taking a load of producer milk and having it  
24 delivered to or pumped into a silo at a Class I  
25 pool distributing plant. And as opposed to --

1 that's it.

2 Q. Or a pool plant?

3 A. Or a pool plant. Or a pool plant, yes.

4 Q. Whatever the Order requires in that

5 respect?

6 A. Yes.

7 Q. And what's "maintaining association"?

8 A. Maintaining association is an accounting

9 aspect where you choose to report a certain

10 amount of milk on your pool report so that -- a

11 certain amount of milk of a particular producer

12 on a pool report so that producer is still

13 associated with the market. And then for the

14 remainder of the milk possibly depooling it or

15 possibly doing something else with it, but since

16 the milk was reported on a report to the Market

17 Administrator that association with the pool

18 still remains and that producer can remain as a

19 pool producer in the following month.

20 Q. And are you responsible for describing how

21 it's landing on paper versus landing on a plant?

22 A. Pardon me?

23 Q. Have you described those concepts as

24 landing on paper versus landing on plant?

25 A. Yeah. Yeah.

1 Q. Okay. One final question. Can you sum up  
2 the aggregate impact of the proposals that  
3 you've advanced here today in terms of their  
4 economics on the Order? I mean, both -- and I'm  
5 talking about Proposals 2, 7 and 9.

6 A. Well, with Proposal 2 we think it's going  
7 to improve the blend price by about \$.02 per  
8 hundredweight. With Proposal 9, it's probably  
9 going to decrease the blend price by something  
10 between two and a half cents and \$0.03 per  
11 hundredweight. So we're pretty close to even  
12 there. And then by the 115 percent re-pooling  
13 to prevent the incidents of depooling, we'll  
14 have a positive impact on the blend price, to  
15 net, net, net, proposals together, we'll  
16 probably have some sort of positive impact on  
17 the blend price overall.

18 Q. And that's our hope and intention?

19 A. That is our hope and intention.

20 MR. BESHORE: Thank you. I have  
21 no further questions on direct for  
22 Mr. Gallagher, Your Honor.

23 JUDGE DAVENPORT: That being the  
24 case, it's almost 5:00. We'll recess at this  
25 point. What is your pleasure in the morning,

1 gentlemen?

2 MR. ENGLISH: 8:30. 8:30, Your

3 Honor?

4 JUDGE DAVENPORT: 8:30 it will be.

5 (Thereupon, the proceedings were

6 adjourned at 4:52 o'clock p.m.)

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