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MIDEAST FEDERAL MILK ORDER NO. 33

PUBLIC HEARING

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

VOLUME II

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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 Tuesday, the 8th day of March, 2005, at 8:29 o'clock a.m., at which time the following proceedings were had.

- - -

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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; Bruce Bloom,
9 Michigan dairy farmer; Gregory Speck, Operations
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1 JUDGE DAVENPORT: I'll call the
2 session back into order. When we recessed,
3 Mr. Beshore had finished his direct examination
4 of Mr. Gallagher. Are there any changes to the
5 schedule today at this point? If none, then
6 I'll entertain cross at this time of
7 Mr. Gallagher. Mr. Vetne, is that you?

8 MR. VETNE: Anybody else?

9 MR. RICCIARDI: No, you can go
10 first.

11 JUDGE DAVENPORT: It looks like they
12 want to get you out of the way first.

13 THE WITNESS: Morning, John.

14 MR. VETNE: Good morning, Ed.
15 Nothing like getting me out of the way. I'm
16 John Vetne. I represent White Eagle Milk
17 Cooperative Federation, et cetera, et cetera.

18 EDWARD W. GALLAGHER
19 of lawful age, a Witness herein, having been
20 previously duly sworn, as hereinafter certified,
21 further testified and said as follows:

22 CROSS-EXAMINATION

23 BY MR. VETNE:

24 Q. As I understand it, Mr. Gallagher, you're
25 filling in for Elvin Hollon of DFA and the

1 statement that you gave was a statement that
2 Mr. Hollon prepared for himself to give
3 essentially with a few minor modifications?

4 A. Yeah. It ended up being a work by
5 committee, me and Elvin drafted it initially and
6 then a number of us worked on it in his absence.

7 Q. Okay. The template for this statement,
8 what Exhibit 14 was Mr. Hollon's testimony
9 essentially?

10 A. I believe it was, yes.

11 Q. I made some notes on testimony, so I'll
12 just go through with it. How much -- how much
13 of DFA's -- DFA's 13,500 farms are pooled in the
14 Mideast Order?

15 A. I think about roughly 2,000.

16 Q. And what percentage of Mideast pooled
17 milk --

18 A. I'm sorry, I didn't hear.

19 Q. I'm sorry. I got to this, didn't I.

20 A. Tall guy.

21 Q. How much of Mideast pooled milk does that
22 represent?

23 A. I would say it's probably -- just based on
24 producer numbers it's probably -- gee, I don't
25 know; 30ish percent. I'm sorry, I don't know

1 that for sure.

2 Q. Thirty percent?

3 A. I'm sure the MAs have that -- the Dairy
4 Division people have that information.

5 Q. I'm sure they do, but I don't know and I
6 have to argue it from this record. The DFA
7 website indicates that the Mideast region of DFA
8 markets roughly 3. -- I have it it's 3.2 million
9 pounds a year.

10 A. Sounds about right.

11 Q. And the statement is also on behalf of
12 Michigan Milk. Do you know how much -- well,
13 what the volume is of the farms that Michigan
14 Milk pools in the Mideast Order?

15 A. I do not know.

16 Q. And Dairylea and NFO were not original
17 Proponents, at least they were not published in
18 the Federal Register as Proponents of 1, 2, 7
19 and 9.

20 At what point did your cooperative and NFO
21 join as Proponents?

22 A. After the Proposals were filed. I'm not
23 sure when NFO came in. Dairylea was involved in
24 discussions on these proposals with Dairy --
25 with DFA, Michigan Milk, and we decided to sign

1 on as Proponents as well.

2 Q. Okay. Did Dairylea on its own behalf
3 submit any correspondence to the USDA?

4 A. No.

5 Q. And what portion of Dairylea's member farms
6 are ordinarily pooled in Order 33?

7 A. I would say it has about 2,400 farms. I
8 would say maybe around a hundredish.

9 Q. And that ebbs and flows from month to
10 month?

11 A. It -- it could change from month to month,
12 yeah, depending on market dynamics.

13 Q. And the volume of those producers is
14 approximately what?

15 A. I -- I don't know that.

16 Q. Are your producers in -- your producers
17 average size?

18 A. Our producers are just slightly larger than
19 average size.

20 Q. Your producers are located -- that's
21 slightly larger than average by New York
22 standards?

23 A. For New York and Ohio standards. The
24 producers -- the producers that get pooled are
25 generally in Western New York.

1 JUDGE DAVENPORT: Mr. Gallagher,
2 there are probably some people out there that
3 are probably having a little bit of trouble
4 hearing you. If you would, project more.

5 MR. VETNE: Between the two of
6 us nobody will know what's going on.

7 THE WITNESS: We're having a nice
8 conversation of our own.

9 MR. VETNE: Thank you.

10 BY MR. VETNE:

11 Q. You were saying the producers --

12 A. The Dairylea producers that get pooled in
13 Order 33, we've got a few in Ohio. There's
14 probably a couple in Pennsylvania -- in western
15 Pennsylvania, but the majority are in western
16 New York, which is we just -- Dairylea does not
17 have a lot of producers in western Pennsylvania
18 or Ohio.

19 Q. Dairylea is also a member of Dairy Farmers
20 of America?

21 A. We are.

22 Q. As a cooperative?

23 A. That's right.

24 Q. And Dairylea and Dairy Farmers of America,
25 among others, are also members of Dairy

1 Marketing Services, a cooperative federation
2 handler in Order 33?

3 A. That's right. The other member of Dairylea
4 is St. Albins Cooperative.

5 Q. Does Dairylea pool milk on Order 33 through
6 the marketing report of the Dairy Marketing
7 Services?

8 A. Dairylea files its own pool report.

9 Q. Does DFA pool its member milk in Order 33
10 on the pool report of Dairy Marketing Services?

11 A. I think DFA files its own pool report. I'm
12 not aware of how the Mideast Order pools its
13 milk, quite frankly.

14 Q. Dairy Marketing Services is a -- is a
15 cooperative organization that has members
16 consisting of cooperatives, and markets the milk
17 also of dairy farms that are not members
18 otherwise of cooperatives?

19 A. That's correct. That's correct, yes.

20 Q. And Dairylea is a manager for the Dairy
21 Marketing Services milk in the Northeast; is
22 that correct?

23 A. Actually, it's a little bit more the other
24 way around. Dairy Marketing Services is its own
25 business unit that markets the milk of Dairylea

1 Cooperative, DFA's Northeast Area Council milk,
2 St. Albins Cooperative. We have a direct
3 marketing venture with Land O'Lakes to market
4 their milk in the east. There are a number of
5 other cooperatives that market their milk with
6 DMS, as well as a number of independents, but
7 there are a group of DSM employees that are
8 marketing for all of that milk.

9 Q. Okay. And in the Northeast Order, does
10 Dairylea have a management role over Dairy
11 Marketing Services?

12 A. There is a -- there is a board of managers
13 of Dairy Marketing Services which consists of
14 dairy farmer directors and managers of DMS,
15 Dairylea, DFA and St. Albins, as well as the
16 dairy farmers directors. Those same
17 organizations.

18 Q. Is the business location of DMS in
19 Northeast the same place as Dairylea's offices?

20 A. Yes, it is.

21 Q. Okay. And elsewhere in the country. DMS
22 has offices in Fairlawn, Ohio for the Mideast,
23 in Kansas City, Missouri for the Central Order,
24 an office in the south and an office in
25 California.

1 Are those Dairy Marketing Services offices
2 in the facilities of DFA?

3 JUDGE DAVENPORT: Excuse me,
4 Mr. Vetne.

5 MR. BESHORE: I want to object to
6 the relevance of the organizational structure of
7 DMS outside of the Mideast Order. I can't
8 perceive any possible pertinence to this
9 hearing.

10 JUDGE DAVENPORT: Mr. Vetne?

11 MR. VETNE: The subject of
12 relevance to this hearing --

13 JUDGE DAVENPORT: Yes, sir.

14 MR. VETNE: -- is -- is control
15 of and the nature of supply organizations. And,
16 in fact, the witness has mentioned the interplay
17 between, for example, the Mideast Order and the
18 Appalachian Order and referred back to the
19 Central Order.

20 And the producer milk data produced
21 reveals that there are producers in -- and
22 producer milk supplies, not only in the physical
23 Mideast Market, but also that comes from lots of
24 other places and the interplay is very relevant.

25 JUDGE DAVENPORT: To the extent that

1 the subject of milk coming from in and out of
2 the region is material, I will allow him some
3 leeway at this time. However, let's not dwell
4 too long on the subject.

5 THE WITNESS: Yes. The DMS has
6 offices in the other -- offices that you
7 mentioned.

8 BY MR. VETNE:

9 Q. In DFA facilities?

10 A. Yes.

11 Q. And, in fact, an exhibit which was
12 requested by DFA and Proponents to be produced
13 by the Market Administrator shows some
14 California milk pooled in the Mideast a few
15 years ago. Do you know that that milk was milk
16 of Dairy Farmers of America from California?

17 A. I'm sorry, I don't know whose milk that
18 was, who pooled it.

19 Q. Do you know in the Mideast whose milk is
20 included on the DMS, Dairy Marketing Services
21 pool report?

22 A. Well, I don't know all of it. I know
23 that -- Dairylea files its own report, and I
24 believe it gets pooled up together into a
25 handler with DMS. And so to the extent that

1 there's DFA Northeast milk pooled from the
2 Mideast Order that that milk would be pooled as
3 well. I do not know; I can't recall if there's
4 any -- I don't believe there are any independent
5 producers in the Northeast Order under DMS that
6 are pooled in the Mideast Order and then I don't
7 know what happens with the Mideast milk.

8 Mideast -- DFA Mideast milk, I don't know what
9 happens with that.

10 Q. Do you know whether, for pooling purposes,
11 the Dairylea milk is combined with DFA milk and
12 independent producer milk by the Market
13 Administrator?

14 A. For pooling purposes in the Mideast Order?

15 Q. Yes.

16 A. For pooling purposes in the Mideast Order I
17 know that the Dairylea milk is combined on the
18 DMS as under the DMS handler report. I don't
19 know, again, what else is on that report that
20 would come from the Mideast office.

21 Q. "The Mideast office" being the Fairlawn
22 facility of DFA?

23 A. That's right.

24 Q. If you'll turn please to page 10?

25 A. Of what?

1 Q. Of your statement or Mr. Hollon's
2 statement.

3 JUDGE DAVENPORT: Exhibit 14.

4 MR. VETNE: Exhibit 14, yes.

5 THE WITNESS: (Witness complies
6 with the request.)

7 BY MR. VETNE:

8 Q. In the ultimate sentence of the middle
9 paragraph, you testified that "DFA has had
10 supplemental suppliers refuse to make deliveries
11 when faced with the opportunity to receive a
12 negative PPD."

13 Do you have personal knowledge of any such
14 occurrence?

15 A. I don't know who they would be. I just --
16 I mean, just intuitively --

17 Q. You don't know who DFA referred to when
18 this testimony was inserted into Exhibit 14?

19 A. Intuitively I know that if there's a
20 negative PPD and milk, say, in an outside
21 marketing area can be depooled and, in fact, is
22 depooled, let's use April 2004 as an example,
23 that if the negative PPD is 3.78 and milk is
24 needed for the Class I market in the Mideast
25 Marketing Area and you go to that outside area

1 supplier who's depooling, not only are they
2 going to want you to pay the cost of
3 transporting the milk, not only are they going
4 to make you pay a premium including the give up
5 charge, they're going to make you pay the 3.78
6 as their opportunity cost for taking that milk
7 off the Order.

8 Q. You're describing what you believe to be
9 the economic incentives based on --

10 A. The current provisions.

11 Q. -- based on the price circumstances of a
12 month?

13 A. Yes.

14 Q. But you're not testifying as to any
15 particular --

16 A. I don't have a name of a handler, no.

17 Q. And do you know whether DFA, in making this
18 statement that it has had supplemental
19 suppliers, was referring to any supplier to the
20 Mideast Order or to the Mideast Order at all?

21 A. I've got to believe that it was, but I'm
22 sorry, I don't have the name.

23 Q. Are you aware that this very same sentence
24 word for word was part of Elvin Hollon's
25 testimony in the Central market?

1 A. I wasn't, no, but --

2 Q. And you were likewise not aware then of
3 any -- of any supplier who, during the month of
4 negative PPDs, has failed to supply milk to meet
5 a contractual obligation to a distributing plant
6 or to a cooperative association that supplies
7 distributing plants?

8 A. Again, intuitively I go back to my prior
9 statement that --

10 Q. Is your answer, "No, but"?

11 A. -- the cost is just so significant that
12 it's unrealistic to even purchase milk from a
13 handler that has that type of supply.

14 Q. Okay. And you were referring in response
15 to maybe two or three questions ago intuitively
16 referring to an outside supplier.

17 Were not all of those responses also
18 applied to an inside supplier within the
19 marketing area that has the opportunity to
20 depool milk?

21 A. Not necessarily.

22 Q. Why not necessarily? Intuitively for me
23 there's no economic difference in the numbers
24 hypothetically that you refer to and explain.

25 A. If you're a -- if you're a cooperative that

1 has depooled milk and you have responsibilities
2 to supply the Class I market, you're going to
3 meet those responsibilities to supply the Class
4 I market even though there's opportunities to
5 depool milk, so it's different.

6 Q. You're talking about -- responsibilities to
7 supply the Class I market means meeting, for
8 example, your full supply commitment to
9 customers?

10 A. Whatever those commitments may be.

11 Q. Okay. And you seemed in response to
12 prior -- your prior testimony to distinguish
13 between the integrity of the response to a
14 supply contract from somebody outside the
15 marketing area.

16 What are those differences where there is a
17 supply commitment why the inside supplier would
18 meet its commitments and the outside supplier
19 would not? What does your intuition tell you?

20 A. It just seems to be a different association
21 relationship in area and out of area. In area
22 is just -- to me at least appears that there is
23 a stronger commitment to the region's overall
24 needs, where the outside area milk tends to pool
25 on the Mideast Order for their own particular

1 advantage and perform as they need to according
2 to the Order's rules and requirements.

3 Q. Okay. And what -- what needs were
4 served -- well, let me ask you this first. In
5 the late spring of 2004 -- there was an Exhibit
6 7, Table 1 that will show this -- there was
7 about a hundred million pounds of milk not
8 previously associated with a pool that came from
9 New York.

10 A. How much? I didn't hear your question.
11 I'm sorry.

12 Q. There was approximately -- I don't know
13 what the numbers are, they'll show what they
14 show -- a hundred million pounds of new milk
15 from New York between April of 2004 and
16 June/July of 2004.

17 A. Can you show me that in the exhibit?

18 Q. I'll see exactly what the number is.

19 A. What exhibit is it?

20 Q. I think we're looking at, I'm sorry,
21 Exhibit 7.

22 A. Is it Request 1(a).

23 Q. Exhibit 7, Request 1(a). Oh, yeah, it went
24 from 46 million to 152 million, so roughly a 100
25 million pound increase.

1 A. Yes.

2 Q. Was that milk serving Mideast market need,
3 or was that responding to economic opportunities
4 as you describe by reference to the west?

5 A. It was responding to economic
6 opportunities, and it met the same pooling
7 requirements as any other milk pooled that
8 month.

9 Q. Okay. And all of that additional milk
10 would have been milk that was pooled through
11 DMS; is that correct?

12 A. Pardon me?

13 Q. All of that additional milk between June of
14 2004 -- wait, May of 2004 and June of 2004 would
15 have been DMS?

16 A. I don't know that.

17 Q. The substantial majority of it would have
18 been?

19 A. I don't know that.

20 Q. Why don't you know that?

21 A. I -- some of it was DMS milk, but I don't
22 know how -- to what extent it was.

23 Q. Are you aware of anybody else that --

24 A. That would be a guess.

25 Q. Okay. Who else in New York has significant

1 milk that they can shift between Order 33 and
2 the Northeast?

3 A. There's Upstate Farms, there's Allied
4 Federated Cooperative, there's some other
5 smaller cooperatives that are independent of any
6 of those groups including DMS.

7 Q. Do you know if those combined have a
8 hundred million pounds of non-Class I milk that
9 they can shift?

10 A. That they can -- I don't know if they could
11 shift it or not, but combined they probably have
12 a hundred million pounds of non-Class I milk.

13 Q. And those organizations have commitments to
14 supply -- to supply New York plants with milk,
15 both Class I and Class --

16 A. I'm sure they do.

17 Q. And in order to associate it with the
18 Mideast, they would have to move at least some
19 of it to the Mideast, in the first instance?

20 A. That's correct.

21 Q. Do you know to what Mideast plant the DMS
22 milk was moved to associate -- to associate in
23 June?

24 A. I do, but that's proprietary information.

25 Q. You do, but it's proprietary. Do you know

1 what state it was moved to associate?

2 A. I do, but that's proprietary information.

3 Q. Do you know what type of plant it was moved
4 to to associate?

5 A. I do, but that's proprietary information.

6 Q. Do you know the distance that this milk
7 moved to associate?

8 A. That was varying distances.

9 Q. They were moved to various plants. Well,
10 no, that's not necessarily true. It comes from
11 farms from varying distances from the plants.

12 Do you know if it moved to more than one
13 plant?

14 A. It moved to more than one plant.

15 Q. Okay. And your response to all of those
16 questions is an objection basically that that's
17 confidential, proprietary and privileged
18 information?

19 A. Yes.

20 Q. Now, the privilege you're asserting is on
21 behalf of what organization, DMS, DFA, Dairylea,
22 or all of the above?

23 A. Right now I would say Dairylea and DMS.

24 Q. What office do you -- or position do you
25 hold with DMS that relates to your ability to

1 assert that privilege on its behalf? In what
2 representation --

3 A. All right. I'm employed by Dairyalea and --
4 as their vice president of planning and
5 regulatory policy and I have an equivalent
6 position with DMS.

7 Q. Although DMS is not a named proponent here,
8 does it share the same interest in these
9 proposals as the named Proponents?

10 A. Yes.

11 Q. And it advocates the same results?

12 A. Of the -- this hearing?

13 Q. Yes.

14 A. Yes.

15 Q. You're aware, are you not, that there are
16 handlers -- distributing plant handlers in the
17 Mideast that have contracts by which they are
18 and will be fully supplied by DMS or members of
19 DMS?

20 A. I believe that's the case, yes. I haven't
21 seen the contracts.

22 Q. And distributing plant handlers that have
23 such contracts include Dean Foods plants, the
24 Kroger plants and others?

25 A. They could. I'm not familiar enough with

1 all of those businesses to let you know
2 definitively whether that's the case or not.

3 Q. Okay. Do you know enough about the market
4 for which you're giving testimony that a full
5 supply, in fact, goes to those plants from DMS
6 or its members?

7 A. I think it does, but it --

8 Q. Again, that's not your area of personal
9 knowledge and responsibility?

10 A. No. That's right.

11 Q. And if Mr. Hollon were here, he could give
12 us that information or he could tell us he's not
13 going to tell us about it because it's
14 proprietary --

15 A. Possibly.

16 Q. -- one or the other? On page 18 of your
17 testimony, first full paragraph, last sentence,
18 under Proposal 2 diversion requirements, one of
19 the --

20 A. Is that, "In order to meet the Proposal
21 2's --"

22 Q. Yes, it is. That sentence, cooperatives
23 that are affected by Proposal Number 2, one of
24 the -- one of the -- and by "affected," I mean
25 would have to -- would have diversions in excess

1 of the proposal.

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

3 Q. One of the responses they might have, you
4 testify, is to ship more milk to pool
5 distributing plants.

6 Are you -- do you know of any distributing
7 plants to which those cooperatives have access
8 to sell milk other than selling through DFA or
9 DMS?

10 A. Yeah, there are others. Can we go to a --

11 Q. We can look at Exhibit 6, the list. I know
12 there's lots of plants.

13 My question is: Do you know of any plants
14 that have needs in excess of what they're
15 already receiving by committed supply?

16 A. I don't know that. I'm sure it ebbs and
17 flows and I'm sure there are a lot of times when
18 there's additional milk that's needed. And, you
19 know, whether a plant needs it or not isn't --
20 you know, that -- that's a procurement decision
21 that that particular plant makes. And I would
22 expect that there are opportunities for
23 additional milk to be shipped to others other
24 than the plants that DFA/DMS supplies.

25 Q. Are you aware of any such opportunities

1 which would -- which exist or which may exist in
2 the future without displacing an existent
3 supplier to those plants?

4 A. I don't know the answer to that.

5 Q. Going to the top of page 19 --

6 JUDGE DAVENPORT: Still Exhibit 14.

7 MR. VETNE: Still Exhibit 14.

8 It's the next page.

9 BY MR. VETNE:

10 Q. You talk about supplemental milk costs and
11 the reduction of supplemental milk costs if
12 Proposal 2 is adopted. Am I correct in making
13 the reference there?

14 A. Yes. We hope.

15 Q. Were you referring generically to
16 supplemental milk costs, or to specific
17 supplemental milk costs of the named Proponents
18 in Exhibit 14?

19 A. Probably both, truthfully. Right now
20 solely from the DFA perspective, the DFA members
21 are financing a system to make sure that the
22 milk needs of the Class I operators are met as
23 they need their milk. And as they do that, that
24 benefit accrues to everyone in the Order, but
25 the cost of that supply is borne solely by the

1 DFA members and that's not fair.

2 And it is -- there are a number of issues

3 that we've advanced to address that there.

4 There's a transportation credit issue as

5 Proposal 2. And it is the hope that not only

6 generically, but specifically for DFA's members,

7 that by the implementation of Proposal 2 it will

8 require more milk from outside the area to be

9 shipped into this Order than currently is being

10 shipped at more reasonable prices that are being

11 charged right now, so that it saves DFA's

12 members some money. Or if they decide not to

13 ship, that the blend price is increased and that

14 benefits everybody.

15 Q. If more milk comes into this Order from

16 outside, whether it's New York or Illinois or

17 Wisconsin, that would increase the total costs

18 for supplemental milk, would it not?

19 A. As -- milk that has to perform for the

20 market in order to qualify for the market has

21 different economics attached to it than milk

22 that does not have to perform. Milk that does

23 not have to perform comes in to service the cost

24 when the market is more expensive than milk that

25 has to perform. So if there's more milk that

1 has to perform by coming into the market to go
2 to a Class I plant, the economics would be more
3 favorable to those that supply the Class I
4 market. Not just DFA, but everybody that is in
5 the market that supplies the Class I market.

6 Q. I'm not sure I got an answer to the
7 question.

8 A. I'm sorry.

9 Q. If more milk is coming from distant
10 locations, whether it be from New England -- New
11 York or from Wisconsin and Illinois, wouldn't
12 the total supplemental milk costs be greater?

13 A. I don't believe it will be.

14 Q. The total transportation costs would be
15 greater. That's believable, isn't it?

16 A. I see what you're saying, yeah. If you've
17 got the cost of five loads now and it results --
18 and it needs to be ten loads, then you've got
19 two times the cost.

20 But, again, I'll go back to my initial
21 response that the economics of the buyer of that
22 milk is different if it's milk that has to
23 perform versus milk that doesn't have to
24 perform. So the cost then is raised to a
25 different entity.

1 Q. Okay. And if more milk comes in, as you've
2 talked about, milk that is local will be
3 displaced. Can we agree on that?

4 A. Not necessarily. Because the reason
5 that -- we're not unconscious here in our milk
6 marketing logistics. If milk is needed from
7 outside the area and is brought in as
8 supplemental needs, it's brought in because we
9 can't get it anywhere else and so it's needed.
10 There's not milk in the area to supply it, so
11 we're bringing it in from outside the area so
12 that milk is not displacing anything.

13 Q. You're talking about the current situation?

14 A. Did I -- I'm talking about what has been
15 the case, yes.

16 Q. Yes. Okay. Now, I'm asking you to talk
17 about the situation that you project on the top
18 of page 19. In the current situation, your
19 testimony is that it's coming in because it
20 needed -- it's needed. We have, under your
21 projections, an additional volume coming in?

22 A. Right possibly. We hope.

23 Q. Well, that's one of the potential results
24 of the proposal?

25 A. Right.

1 Q. With that additional volume that is not
2 currently coming in, would that not displace
3 local milk supplies to those distributing
4 plants?

5 A. It's not a given that it will displace
6 those supplies. It may come in at a time where
7 those additional supplies where needed, it can't
8 be garnered anywhere. And I'm very confident if
9 that means that some other farmer's milk doesn't
10 have to go to a plant, there are ample
11 opportunities for that milk to land at another
12 plant close-by in the marketing area. All
13 farmers will remain as they do now having a
14 lucrative and viable market in the Mideast area
15 that are located in the Mideast area.

16 Q. Meaning it will all be pooled?

17 A. Yes. As long as the handler chooses them
18 to be pooled.

19 Q. I see. Do you know to what extent Proposal
20 2 would present a problem for cooperatives
21 having members in the marketing area who are now
22 pushing the existing diversion limits?

23 A. I don't believe that any producer within
24 the marketing area will not be able to have
25 their milk pooled at a handler in the Mideast

- 1 area.
- 2 Q. Well, what you mean is pooled by somebody?
- 3 A. Pooled by somebody in the Mideast area.
- 4 Q. Can you answer in terms of pooled by the
5 same person, the same entity that's pooling that
6 producer today?
- 7 A. I -- I don't -- the issue of who the
8 pooling entity is, I think, is moot. The excess
9 to the pool opportunity is going to be
10 available.
- 11 Q. Okay. Do you know to what extent DFA and
12 DMS, whoever -- however it's pooled, have a
13 pooling base to spare? By "pooling base," I
14 mean shipments to distributing plants that
15 qualify milk to be pooled for non-Class I
16 purposes?
- 17 A. I don't know that specific information. I
18 want to point something out, though. And I'm
19 trying to think -- oh, here -- one of your --
- 20 Q. In one of the Market Administrator's --
- 21 A. No. It was one of your exhibits.
22 Exhibit --
- 23 Q. You're referring to Exhibit 11?
- 24 A. Exhibit 11.
- 25 Q. By the Market Administrator?

1 A. Yes. By the Market Administrator, I'm
2 sorry. Number of plants, number of handlers.
3 Table 2, the "Size Range of Handlers Equal to or
4 More than 25 Million Pounds." There are six
5 handlers there, full distributing handlers in
6 that category that have receipts of 541,000
7 million pounds in December and distribution of
8 473.8 million pounds, so that, to me, tells me
9 there are a lot of opportunities for somebody to
10 find additional access if they feel they need it
11 and can't find it elsewhere.

12 And I don't believe there's going to be a
13 problem for anyone in the Mideast area that is
14 currently pooled to be pooled after our Proposal
15 2 is adopted.

16 Q. Let me ask you this. If you know, in the
17 Mideast if a producer who is currently now
18 pooled through a small cooperative after the
19 proposal needs to find another way to pool, is
20 there a means by which this producer can
21 associate his milk or sell his milk to Deans or
22 Kroger without marketing through DMS?

23 A. I don't know the definitive answer to that.
24 I don't know the definitive supply requirements
25 here in the Mideast Order as well as I do in the

1 Northeast. I would tend to think that there
2 would be a requirement -- that both of those --
3 both of those handlers have supply agreements
4 with DFA, but that does not mean that they could
5 not get access -- pooling access at those
6 plants.

7 We shouldn't let paranoia be the
8 determinant of what kind of provision we have in
9 the Mideast Order that correct these marketing
10 issues that we need to get corrected. I, again,
11 would state that any producer who's in the
12 Mideast Marketing Area will be able to be pooled
13 in the Mideast Marketing Area without a problem
14 after Proposal 2 is implemented.

15 Q. Through somebody?

16 A. Through either what they do on their own,
17 or through a partner that -- a partner in
18 relationship that they form. It could have a
19 lot of positive benefits after that relationship
20 is formed.

21 Q. Do you know under existing supplier
22 arrangements a producer who is not marketing
23 through DFA or DMS can be received by a DFA
24 plant without -- received by a Dean Foods plant
25 without DFA's consent?

1 A. Yeah.

2 Q. Pardon?

3 A. Yes.

4 Q. You know that for a fact for the Mideast?

5 A. I know it for a fact.

6 Q. For the Mideast plants?

7 A. Yes.

8 Q. And that milk does not have to go through

9 DMS or be pooled through DMS?

10 A. Yes.

11 Q. Do you know what plants those are?

12 A. That's proprietary information.

13 Q. Are you asserting the privilege for Dean

14 Foods?

15 A. No. Why would I assert a privilege for

16 Dean Foods? I'm asserting a privilege for DMS

17 and Dairylea, because I don't want on the record

18 people -- others who market to the Mideast

19 through us to know how they can get access to

20 one.

21 Q. So you know that information because the

22 plants that you serve -- that DMS serves

23 someplace to Dean Foods have some producers and

24 some volume that is not marketed through DMS?

25 A. Yes, sir.

1 Q. Is that specific to the Mideast Market, or
2 is that also true for the Northeast?

3 A. Yeah. I think it's also true, I think, of
4 the Northeast. I think it's also true for the
5 Northeast.

6 Q. It's your testimony that DFA does not have
7 to consent in any fashion to Dean Foods
8 receiving such milk?

9 A. Say that again.

10 Q. Is it your testimony that Dean -- DFA does
11 not have to consent in any fashion to Dean Foods
12 receiving milk?

13 A. That's not my testimony.

14 Q. Oh, okay. Do you know whether to receive
15 such milk DFA would have to consent to Dean
16 Foods receipt?

17 A. Not in every single case.

18 Q. Not in every single -- and does that depend
19 upon the content of the milk supply agreement to
20 its references made in the Dean Foods annual
21 report with 20-year agreement for which there is
22 up to a \$90 million liquidated damages clause?

23 A. I -- I've testified to something that I
24 know is going on in the marketing -- in the
25 Mideast/Northeast area. I have not had the

1 opportunity or the privilege to look at the
2 marketing contract, so I just -- I can't answer
3 that. I don't know what the provisions are.

4 Q. Without looking at the marketing contract,
5 have either DMS, DFA or Dean Foods explained to
6 you the terms of the marketing contract?

7 A. The broad basics of the marketing contract.

8 Q. And what are those broad basic --

9 A. The broad basics are that for most of the
10 plants DMS/DFA, at least in the Northeast, is
11 the sole supplier to those plants. And I also
12 know that for almost every one of those plants
13 there are supplies other than DFA, Dairylea and
14 St. Albins milk going into those plants.

15 Q. Do you know whether that additional supply
16 is pooled through DMS?

17 A. No. It would be -- some of it is. Some of
18 it's pooled by whoever the shipper is.

19 Q. And do you know whether that additional
20 supply is marketed in response to the
21 responsibilities of DFA/DMS?

22 A. Well, ultimately, sure. But, again, there
23 are some instances where there is milk going
24 into some Dean plants that ended up there and we
25 scratched our heads.

1 Q. Okay. And regardless of -- whose pool
2 report that milk comes in on, it would be a
3 function of DFA/DMS carrying out its supply
4 responsibilities to --

5 A. Not the stuff I just mentioned.

6 Q. Would not be part of that contract
7 supplier's responsibility?

8 A. No. I can't get into the specifics about
9 how this interaction worked.

10 Q. For reasons of proprietary information?

11 A. Yeah.

12 Q. Going to Exhibit 14 page 20, the first
13 paragraph which is --

14 A. Pardon me?

15 Q. Exhibit 14, page 20.

16 A. Yeah.

17 Q. The first paragraph talking about Proposal
18 2, and, again, this comes from the text prepared
19 by Elvin Hollon where he thought he was going to
20 give it, correct?

21 A. It is written to -- well, there's no way we
22 could change the contents.

23 Q. Yeah. You/Elvin opine that the proposals
24 affect all suppliers equally.

25 With respect to Dairylea, DFA/DMS, Michigan

1 Milk and NFO, on whose behalf you speak, would
2 any of those organizations have to cut back on
3 milk pooled as a result of Proposal 2 if it is
4 adopted?

5 A. Again, I go back to what I -- all the milk
6 in the marketing area producers will get pooled.
7 There may be some changes in relationships of
8 who the actual pooling entity is. Does that
9 answer your question?

10 Q. No.

11 A. Sorry.

12 Q. Your intuition is correct again. My
13 question is: Have you -- have the Proponents
14 that you represent examined whether the adoption
15 of Proposal 2 will affect them by requiring them
16 to depool -- or to disassociate milk?

17 A. I know that later today, maybe tomorrow,
18 probably maybe after you leave on Wednesday,
19 Carl Rasch is going to testify for -- on behalf
20 of Michigan Milk Producers and I believe that
21 they are going to present a requested adjustment
22 to our Proposal 2 that would slightly change the
23 August shipping requirement from 40 to 35
24 percent. Obviously, they would do that because
25 they would have some concern about what you're

1 talking about.

2 Q. The August shipping requirement, does that
3 mean the Section 13 reciprocal of allowable
4 diversions, or does that mean in Section 7
5 cooperative --

6 A. 7 -- I believe it's the 7(d) that -- in
7 August it would be 35 percent instead of 40
8 percent, but you have to wait for Carl to come
9 up to specifically identify that if they are
10 going to continue to advance that.

11 Q. Okay. And as long as we're there, during
12 these periods when DFA/DMS was bringing in
13 supplemental milk from outside of the marketing
14 area, if DFA/DMS seek supplemental supplies
15 within the marketing area from the MMPA,
16 supplies that were going to cheese in Michigan?

17 A. I'm sure that DFA contacted every
18 organization that they thought of that would be
19 milk available to see what the opportunity of
20 purchasing milk would be from that organization,
21 and I'm sure that every organization quoted a
22 price and I'm sure that DFA purchased the milk
23 that was the least expensive to them.

24 Q. Am I correct that you're answering on the
25 basis of your intuition rather than personal

1 knowledge of what anybody did?

2 A. Absolutely. I have a high degree of
3 confidence in the management people in the DFA
4 Mideast office.

5 Q. On page 21, the first full paragraph of
6 Exhibit 14, you refer to supply plants and the
7 proposal for increased shipments from supply
8 plants.

9 First of all, would you agree with me that
10 there's not a heck of a lot of 9's -- or 7(c)
11 supply plant milk left in this market?

12 A. Is there any?

13 Q. Apparently some months occasionally on and
14 off, according to Exhibit 11 in some months
15 there's supply plant --

16 A. There's not much, I don't think.

17 Q. I take it from your answer that, yes, you
18 would agree with me?

19 A. Yes.

20 Q. And there's no traditional 7(c) supply
21 plants left within the marketing area?

22 A. Not within the marketing area that I know
23 of. That's correct.

24 Q. There are plants that can be pooled under
25 Section 7 that are manufacturing plants, but

1 those plants, 7(d) or 7(e), don't have to
2 perform individually?

3 A. 7(d) plants have to perform, sure.

4 Q. The 7(d) plants --

5 A. Yeah.

6 Q. -- perform on a plant basis?

7 A. Well, I mean, the owners of the plants that
8 want to pool milk on their 9(c) units have to
9 perform to the 7(d) requirements.

10 Q. Well, that's not a plant performance
11 requirement. It's an owner performance
12 requirement.

13 A. It's the -- it's the -- what's the
14 difference? It's the owners have to perform.

15 Q. Well, maybe the difference is that they
16 don't have to perform with milk that's
17 associated with the manufacturing plant. They
18 can perform with milk located anywhere.

19 A. Well, that's true, but they -- not only do
20 they have to perform on 7(d), but they have to
21 perform on under 13 as well, so they have two
22 things they have to meet.

23 Q. 7(d) and 13 are complementary reciprocals
24 except for the MMPA proposal?

25 JUDGE DAVENPORT: Do I have to swear

1 you, too?

2 BY MR. VETNE:

3 Q. Is that correct? If I don't say "Is it
4 correct" at the end of my questions, please
5 intuitate it.

6 A. No. The 7(d) plants have to ship 40
7 percent -- yeah, an 9(c) unit that has a 7(d)
8 plant has to ship 40 percent to distributing
9 plants, and then -- under our proposal, and then
10 if that is only 50 percent it can go to nonpool
11 plants in certain months.

12 Q. Yeah.

13 A. So that's -- they're not necessarily
14 reciprocal.

15 Q. Not necessarily, no, because there's an
16 advantage actually to owning or operating or
17 designating a 7(d) plant in that's a plant that
18 can receive milk from manufacturing purposes
19 that does not count against the Section 13
20 diversions?

21 A. Say that again.

22 Q. There's an advantage to operating a 7(d)
23 plant --

24 A. I got that part. The last part.

25 Q. -- because milk received by such plants

1 does not count against diversions?

2 A. Okay. Correct. Because it's a supply
3 plant. That is correct.

4 Q. And it does count for whatever touch base
5 requirement may apply?

6 A. That's correct.

7 Q. Whereas milk received by a similar -- a
8 manufacturer of a similar product wherever
9 located that is not a 7(d) plant, that milk
10 would count against diversions because it's
11 nonpooled?

12 A. Unless it's a 7(c). We've already gone
13 down that road there. I'm in the Mideast Order
14 right now.

15 Q. And it would not count that competing plant
16 for --

17 A. It is a nonpool plant, correct.

18 Q. And there are currently no 7(e) plants.
19 The last time a 7(e), the Leprino plant, was
20 pooled was March of 2004, according to the data
21 assembled by the Market Administrator, Exhibit
22 11.

23 Do you know of any plans to reassociate the
24 Leprino plants as 7(e) pool plants?

25 A. I don't know that.

1 Q. And --

2 A. I mean, I think they have to qualify on
3 their own for 12 months before they can be
4 reassociated, so --

5 Q. That's what it says.

6 A. Yeah.

7 Q. My question is whether you've had any
8 discussion with MMPA about that possibility?

9 A. I have not, no.

10 Q. I'm going to page 24 of your testimony in
11 Exhibit 14, the last full sentence.

12 A. "What is the recent phenomenon --"

13 Q. "Competing milk supplies do not have equal
14 returns available to pay producers for their
15 milk deliveries." And preceding that you
16 talk -- you describe that consequence of
17 depooling as disorderly.

18 Am I correct in my interpretation of that
19 testimony?

20 A. Yeah. That's something that was verbatim
21 out of Elvin's prior testimony.

22 Q. Do you believe it was?

23 A. No, I'm kidding. You didn't mention it, so
24 I'm thinking that it didn't, that it wasn't.

25 Q. I'm not going to mention it every time.

1 The transcript from the Order of the Central
2 Market and the Upper Midwest Market are on the
3 website.

4 A. You should have Elvin's testimony memorized
5 by now, John. Come on.

6 Q. I dream about it. With respect to that
7 conclusion, would it be also your opinion that
8 any regulated environment when competing milk
9 supplies do not have equal returns available to
10 pay producers there is disorder whether the
11 cause of that is depooling or anything else?

12 A. I'm sorry. Somebody coughed. I didn't
13 hear that last word.

14 Q. Would you agree that when competing milk
15 supplies do not have equal returns to pay
16 producers in a regulated environment that that
17 is disorder whether or not the cause of such
18 unequal returns under the regulations is
19 depooling or some other context?

20 A. I guess I would have to know the context.
21 I don't want to have a blanket statement that is
22 it in every case. In this particular instance,
23 effects of depooling do create disorderly
24 marketing issues. If you would like to offer an
25 example, I'll opine on that.

1 Q. Well, it's disorderly, in your opinion,
2 because it results in unequal returns to
3 producers?

4 A. Depooling, in my opinion, results in
5 unequal returns to producers as well as it can
6 also -- on the flip side, it can -- let's leave
7 it at that. It can result in unequal returns to
8 producers.

9 Q. Unequal returns to producers in that
10 context is a disorderly market issue, in your
11 opinion?

12 A. In my opinion, depooling results in unequal
13 returns to producers and it's disorderly.

14 Q. And is disorderly. Did you just disjoin --

15 A. I didn't.

16 Q. -- the concept of unequal returns and
17 disorderly? Did you mean to do that?

18 A. What I said, and I'll repeat it again, is
19 that our testimony here today is that current
20 ability for handlers to depool without any
21 economic consequences is a disorderly marketing
22 condition that needs to be corrected. And part
23 of the problem with depooling is that it creates
24 unequal returns to producers.

25 THE WITNESS: God has spoken.

1 Sorry.

2 MR. VETNE: The record won't
3 pick up when somebody reads this transcript.
4 Microsoft called.

5 BY MR. VETNE:

6 Q. The disorder that you describe, that
7 disorder or a component of that disorder is the
8 unequal returns; am I correct?

9 A. In this particular instance on depooling.
10 Again, if you have another example that you want
11 me to consider, please present it and I will
12 consider it.

13 Q. Proposal 2. If Proposal 2 causes some
14 producers to have greater costs than others or
15 causes some producers' cooperatives to not be
16 able to pool milk and products unequal returns,
17 is that not a disorderly condition for the same
18 reasons that unequal returns are disorderly
19 under Proposal 7?

20 A. Well, again, I'm going to come back to -- I
21 do not believe that any producer in the Mideast
22 Marketing Area will not be able to be pooled, so
23 I don't believe it's going to cause a disorderly
24 marketing condition for them. If there are
25 producers who are not performing for the market,

1 performing to the Class I market and this
2 requires them to do so, it results in a little
3 bit more cost, then so be it. The cost is
4 appropriate relative to the benefit they get out
5 of the market from getting the PPD, which on
6 average is positive and beneficial to their
7 business.

8 And if in the end there's outside area milk
9 that does not get pooled, I don't see that as
10 being a problem, because that milk for the most
11 part isn't coming into plants in this region
12 anyway. It's staying in its outside region
13 going to a plant, it's going to have a home and
14 it's going to get pooled.

15 So I don't see how there's going to be any
16 disorderly marketing conditions created by
17 Proposal 2. If you would like to have somebody
18 come up and testify to the contrary, I mean --

19 Q. My question is not whether the proposal if
20 adopted would increase costs. I mean, I think
21 the testimony is pretty obvious. Your testimony
22 indicates that.

23 My question related to whether it will
24 increase costs differently for one supply
25 organization compared to another resulting in

1 unequal returns between those two supply
2 organizations?

3 A. Well, John, right now there are unequal
4 returns because we don't have as stringent of
5 pooling requirements as we should have. And the
6 unequal returns right now are being borne by, in
7 our particular case, the DFA members. So this
8 is an attempt to create a more level playing
9 field in the marketplace.

10 Q. You testified that DFA/DMS brings in milk,
11 supplemental milk from outside the marketing
12 area when needed because it can't get milk
13 locally. Is that --

14 A. Because the cost of the milk locally is
15 greater than the cost of wherever they get it
16 from.

17 Q. And in Exhibit 14 you offered -- I'm not
18 going to refer to a specific page unless I have
19 to. You offered some testimony on milk supplies
20 coming from locations, I think, in Wisconsin,
21 Minnesota and Illinois?

22 A. Yes.

23 Q. And the transportation invoices showed the
24 originating source of that milk --

25 A. Yes.

1 Q. -- by handler, in some cases by handler?
2 Do you know whether that milk that was in those
3 invoices was similar milk for which invoices may
4 not have been attached, was transported to the
5 Mideast by DFA/DMS as a result of a commitment
6 to the supplier to pool the supplier's milk as
7 opposed to the need of the receiving plant for
8 that milk?

9 A. I do know that some of that milk was on a
10 spot purchase basis and some was on a
11 contractual basis. I do not know if there was a
12 prior commitment to supply the milk for those
13 purposes for another entity; I don't know that.

14 Q. Are you -- do you have knowledge of DFA's
15 practices in offering to pool milk for entities
16 for a fee from areas west of Indiana?

17 A. No. I'm not aware of that.

18 Q. You're not aware if it happens, or you're
19 not aware of the details?

20 A. I'm not aware that it happens. I mean, I
21 know there's milk that comes in for a fee. I'm
22 not -- that's foreign to me; I don't know that.

23 Q. It's foreign to you that it doesn't happen
24 in the Northeast?

25 JUDGE DAVENPORT: Asked and answered,

1 counsel.

2 MR. VETNE: I'm not sure I
3 asked about west of the market.

4 BY MR. VETNE:

5 Q. I'm asking whether this occurs in the
6 Northeast.

7 A. To my knowledge.

8 JUDGE DAVENPORT: Rephrase your
9 question then.

10 BY MR. VETNE:

11 Q. The bottom of page 24 you referred to the
12 compelling need for a -- an amendment addressing
13 depooling. It's not the fact that depooling is
14 a new practice, but rather that the volatility
15 encouraging -- well, price volatility
16 encouraging depooling has greatly increased?

17 A. Yes, that's true.

18 Q. And would you agree that price volatility
19 is produced when buyers bid on cheese or buy
20 cheese on the CME and there follows a consequent
21 price increase in the NASS survey plants and a
22 consequent price increase in Federal Order
23 prices?

24 A. Well, if you want to -- I mean, prices are
25 changing because of interactions that are

1 occurring, in the end, in the NASS survey, which
2 is highly influenced by buying and selling on
3 the Chicago Mercantile Exchange's cash, butter
4 and cheeses markets, but that is changing
5 because of changes in the underlying supply and
6 demand for dairy products. It's that underlying
7 supply and demand for dairy products which is
8 causing the volatility in the marketplace.

9 Q. Do you know whether -- last spring when the
10 period of greatest price increase in the CME
11 followed by a sharp drop, do you know whether
12 anybody was buying or bidding for milk causing
13 the CME to go up other than DFA?

14 A. I don't know the names, but the answer is
15 yes.

16 Q. Okay. Do you know to what extent other --
17 other than DFA, through their bidding agent,
18 helped bid up the price in the spring of 2004?

19 A. It's my understanding that it was not DFA
20 at all.

21 Q. Were you -- are you aware of statements
22 made by Gary Hamlin, CEO of DFA?

23 A. I was at the annual meeting with Gary
24 Hamlin when those statements that were printed
25 in the newspaper article that you refer to.

1 Q. Okay. Mr. Hamlin took credit for DFA for
2 raising cheese prices by bidding on the CME?

3 A. He did not take -- if the article suggested
4 that, it was an inaccuracy. I don't believe he
5 took credit for the increase in the cheese price
6 from March through April.

7 Q. Is it your testimony that he took credit
8 for increasing the price in other periods, but
9 not that specific period?

10 A. The -- I believe the article indicated that
11 DFA needed cheese for its operations and as a
12 method, along with others of trying to get
13 cheese for their operations, that they purchased
14 cheese on the national -- or excuse me, CME cash
15 market to get the cheese they needed to meet the
16 customer demands they had for their operation.

17 Q. Okay. There was a media report that DFA
18 was the only purchaser of milk -- or bidder --
19 excuse me, for cheese on the CME in the month of
20 June.

21 A. Pardon me?

22 Q. There was a media report that DFA was the
23 only bidder for cheese in the month of June.

24 A. I don't know that specifically.

25 Q. You don't know that. All right. Do you

1 have any information on -- that if DFA was not
2 the responsible bidder or buyer of cheese in the
3 spring, do you know who?

4 A. Rumor and innuendo. I'm not going to say
5 anything.

6 Q. And what is the -- what is the source of
7 the information that you rely upon?

8 A. Idle chitchat.

9 Q. Chitchat. Some insider in the CME?

10 A. No.

11 MR. BESHORE: I object to
12 inquiring to the sources of rumor and innuendo
13 for this record. I mean --

14 JUDGE DAVENPORT: Sustained.

15 BY MR. VETNE:

16 Q. On page 26 of your testimony, the first
17 full paragraph, third sentence, "The handler
18 with Class I sales must draw from margins in
19 order to pay a competitive price because its
20 regulated return is less than that of the
21 depooling handler."

22 Do you have knowledge that that, in fact,
23 happened in the Mideast Order?

24 A. No, I don't have knowledge of that
25 particular event happening. In theory it's

1 easily understood that it could happen.

2 Q. And the same sentence appeared in previous
3 hearings in the Central Market in the Upper
4 Midwest?

5 A. I thought you were going to say that.

6 Q. So I'm just wondering if you had any
7 knowledge that it happened, sir. Okay. Are you
8 aware specifically in the --

9 A. Are you going to come up here and testify
10 that depooling is not a problem?

11 Q. I might.

12 JUDGE DAVENPORT: Mr. Gallagher,
13 confine it to testimony, answers.

14 MR. VETNE: I'm sorry, Your
15 Honor.

16 BY MR. VETNE:

17 Q. Are you aware of any fluid milk plant in
18 the Mideast that was not supplied with needed
19 volumes of milk for processing Class I and II
20 products during the period of depooling?

21 A. I am not aware; I don't know. I don't want
22 to say no, I just don't know that.

23 Q. On page 28, the bottom of the page, first
24 full sentence, you refer to months in which
25 "depooling had a nominal impact on the Order's

1 Producer Price Differential"?

2 A. Yes.

3 Q. What was your measure to define the word
4 "nominal"?

5 A. There was -- one of the exhibits of the
6 government, they -- it was ours, there was a
7 table that showed the -- for 2003 and 2004 the
8 impact of depooling, and it identified the class
9 of milk that was depooled, and by "nominal"
10 there were some months where it was zero or less
11 than a few cents, so that was what I was saying
12 was nominal.

13 Q. Okay.

14 A. If you want to specifically, I can find the
15 table and identify it. Is that important?

16 Q. Sure. That's fine. Yes, please.

17 A. Okay. It's Exhibit 7, Request Number 5.

18 And so I would say January '03, March '03, April
19 '03, June '03. I'm not sure how I count July
20 '03 or October '03. February and March '04,
21 September '04 and November '04 I would say were
22 nominal.

23 Q. And the dollar value associated?

24 A. Based on impact to the PPD.

25 Q. And the dollar value on the PPD in those

1 months was less than what?

2 A. In those -- it was plus or minus -- let's
3 call it plus or minus one cent a hundredweight
4 on the PPD. I don't know what the total values
5 in and out of pool would have been.

6 Q. Prior to what you referred to as the recent
7 introduction of extreme volatility and extreme
8 depooling, there was depooling in the '80s, late
9 '80s and '90s as your/Hollon's testimony
10 indicates?

11 A. Yes.

12 Q. Which included months in which the --
13 factored in depooling the difference between the
14 blend and the Class III price was more than what
15 you describe here as nominal?

16 A. Yes.

17 Q. But that range of inverse pricing or
18 depooling did not produce a request similar to
19 these proposals.

20 Where do you draw the line between a
21 depooling response that requires regulatory
22 intervention and one that does not?

23 A. Since -- since Federal Order Reform
24 occurred there were many changes to the Order.
25 There were changes that were made at that time

1 because depooling had been occurring. There
2 were changes at that time to have less of an
3 advance in the advanced pricing, more current
4 information going into -- let me say it
5 different. More current information going into
6 the advanced price of Class I in hopes to
7 mitigate the issues involved in depooling.

8 And the industry gave that time to see what
9 would happen. And certainly there were some
10 times when depooling occurred it didn't seem to
11 be such an issue that had warranted having it
12 dealt within a hearing prior to this, but the
13 market volatility has increased so much over the
14 last couple of years and the market volatility
15 is going to increase more than we've ever seen
16 it, we're going to see higher highs and lower
17 lows going forward because of the practices of
18 the industry to minimize their costs in carrying
19 inventories.

20 We're going to see a one-month interaction
21 of supply and demand that is going to drive
22 prices extremely high extremely quickly, or the
23 reverse when they drive prices extremely high
24 and extremely quickly, the current formulas that
25 are used under Federal Orders to determine the

1 class pricing are going to result in price
2 inversions between what ultimately will be the
3 blend price and ultimately will be a class
4 price.

5 And so the incidents of depooling are going
6 to be more frequent, as we've been seeing, and
7 the dollar value impact on the blend price is
8 going to be more significant, as we've been
9 seeing and the industry has realized that. And
10 the line in the sand is now drawn and we're
11 going to encourage USDA to implement changes to
12 the Mideast Order as well as a number of other
13 Orders where we've requested these changes to
14 mitigate the instances and possibly with our
15 proposal may virtually eliminate the
16 opportunities for depooling. So the line in the
17 sand is right now, today.

18 Q. Okay. I'm going to ask you to draw a
19 couple of subsidiary lines in the sand. You've
20 described the line as you've described as now.

21 Can you describe in terms of PPD impact the
22 line at which you believe regulatory
23 intervention is required and then another line
24 of PPD impact which you believe emergency
25 regulatory relief is required?

1 A. Well, I don't think we can wait any longer
2 to implement the depooling provision. For the
3 month of February, I honestly believe there's
4 going to be milk depooled in the Mideast Order
5 because in the outer zones there's going to be a
6 negative PPD, so we can't wait.

7 And this could occur -- the volatility
8 that's in the market, we could see the same
9 thing happening a few more months this year.
10 And so it doesn't -- to me it's not a line in
11 the sand that's a PPD impact. It's a line in
12 the sand we need to do something to mitigate the
13 incidents and impacts of people and -- by -- and
14 I believe the way to do that is with the
15 proposal that we have offered.

16 JUDGE DAVENPORT: Counsel, let's stop
17 it at this point and let's take a recess.

18 What's everybody's pleasure. 10:10?

19 MR. BESHORE: 10:10.

20 JUDGE DAVENPORT: We'll be in recess
21 until 10:10.

22 (Thereupon, a recess was taken.)

23 JUDGE DAVENPORT: Mr. Beshore?

24 MR. BESHORE: Your Honor, with
25 your permission, we would like to interrupt

1 Mr. Gallagher's cross-examination at this point
2 and call a dairy farmer member, Mr. Bruce Bloom,
3 who needs to testify in order to get back home.

4 JUDGE DAVENPORT: Very well. Are
5 there objections from Mr. Vetne?

6 MR. VETNE: No.

7 JUDGE DAVENPORT: Very well.

8 Mr. Bloom, you want to come forward? Mr. Bloom,
9 would you raise your right hand?

10 (Thereupon, Mr. Bloom was sworn by
11 Judge Davenport.)

12 JUDGE DAVENPORT: Please be seated.
13 Mr. Beshore?

14 MR. BESHORE: Yes. Thank you.

15 BRUCE BLOOM
16 of lawful age, a Witness herein, having been
17 first duly sworn, as hereinafter certified,
18 testified and said as follows:

19 DIRECT EXAMINATION

20 BY MR. BESHORE:

21 Q. Mr. Bloom, have you prepared some brief
22 remarks that you would like to present at this
23 time?

24 A. Yes, I have.

25 Q. Okay. Would you proceed with it, please?

1 A. Okay. My name is Bruce Bloom. My address
2 is 253 West Colon Road, Coldwater, Michigan
3 49036. My brother and myself operate a third
4 generation dairy farm in south central Michigan.
5 We milk 480 cows. We ship our milk through
6 Dairy Farmers of America to plants in
7 Indianapolis, Ft. Wayne and Goshen, Indiana,
8 depending on where it's currently needed. We
9 are member owners of DFA and have been for over
10 ten years.

11 Except for college and seven years in the
12 Army, I've been involved in agriculture and
13 dairy my entire life. I strongly support the
14 idea of cooperative marketing. My family has
15 sold milk through cooperatives for 30 plus
16 years. We have supported the cooperative system
17 as sellers and buyers for many years and served
18 on cooperative boards and committees. I serve
19 on the board of the North Central Cooperative, a
20 supply cooperative operating in northern Indiana
21 and southern Michigan.

22 I'm not here as an expert on the Federal
23 Milk Marketing System and am not equipped to
24 answer technical questions, but I am here to
25 tell you of the impact on the current system on

1 those of us who have to live with it. In April
2 of 2004 we had a negative producer price
3 differential of \$3.98, in May of 2004 \$1.84 and
4 again in December of 2004, \$0.65. From the
5 information provided by the Market
6 Administrator, depooling was responsible for
7 \$1.66 of April's negative PPD, \$0.74 of May's
8 negative PPD and \$0.29 of December's. We
9 produce over a million pounds of milk a month,
10 so April cost us over \$16,000, May over \$7,400
11 and December over \$2,900.

12 Most dairies depend on the highs and lows
13 to average out over time and allow them to make
14 a profit. In many cases, a profit at a dairy
15 will average from \$0.50 to \$1.50 a hundredweight
16 over a year. A month of depooling charges like
17 this is like losing a month of profit of average
18 prices. We've tried to limit our risk in
19 marketing milk through using forward contracts
20 and hedging what we considered to be profitable
21 Class III prices. This is a process that the
22 USDA itself is encouraging, and in the case of
23 the Dairy Options Program -- Dairy Options Pilot
24 Program even funded. We know that when we do
25 this we're foregoing price appreciation and we

1 accept that.

2 When we received our settlement check in
3 April of '04, my brother and I had a very
4 spirited discussion about the wisdom of forward
5 contracting when the price went up sharply and
6 we got hit by a negative PPD. I took the
7 position that PPDs should average out, but he
8 pointed out that with depooling and re-pooling
9 some milk, sellers dodged the bullet leaving us
10 holding the bag, then rejoin again when the PPD
11 was positive.

12 May 2004 did not improve the tone of this
13 discussion either. In other words, the money
14 was gone and we would not see it return in the
15 annual average. This doesn't seem to be a
16 particularly fair way to operate a milk pricing
17 system. I understand that PPDs will not always
18 be positive due to the system of pricing milk
19 and I can accept that. The fact that depooling
20 aggravates and increases negative PPDs does not
21 seem right to me. It seems a little strange to
22 me that we would operate a system in which we
23 would move milk around on paper and game the
24 federal system for a profit. I understand how
25 markets have to bring in milk at shortage times

1 and that this milk has to be paid for in some
2 fashion, but the current system seems designed
3 to encourage distortions which obscure the
4 market signals that we need to tell us, the
5 producers, to produce milk in the right place at
6 the right time.

7 It seems that the Class III milk market on
8 which our prices are based is becoming more
9 volatile all the time. We've gone from lows in
10 the low \$9 range to highs of over \$20 in the
11 last two years. With these peaks and valleys,
12 PPDs are varying much more. Increasing PPDs
13 through depooling -- excuse me, increasing
14 negative PPDs is what it should be, through
15 pooling will just make it that much harder for
16 the remaining dairy farmers to survive, to grow
17 and to pass their farms and heritages on to the
18 next generation.

19 The sooner a fair and transparent system is
20 established, the sooner we dairy farmers can get
21 back to taking care of our cows and our farms,
22 and that's all I ask for, a logical and
23 transparent system understandable by all and not
24 subject to games. I would ask that this request
25 be acted upon without delay. Every month is an

1 opportunity for a loss in this situation. I
2 believe it would benefit all dairymen in this
3 Order if Proposals, 1, 2, 7 and 9 were
4 implemented.

5 I am speaking for myself in this matter and
6 no one has told me what to say. I sincerely
7 believe that these proposals are in the best
8 interest of the dairy industry. I thank you for
9 taking the time to listen to my thoughts on this
10 matter.

11 JUDGE DAVENPORT: Mr. Beshore, we
12 will mark Mr. Bloom's statement as Exhibit 16.
13 Do you move for its admission?

14 MR. BESHORE: I do.

15 JUDGE DAVENPORT: Are there
16 objections to its admissibility? There being
17 none, Exhibit 16 will be admitted into evidence
18 at this time.

19 (Thereupon, Exhibit 16 of the Mideast
20 Federal Milk Marketing Order hearing
21 was marked for purposes of
22 identification.)

23 JUDGE DAVENPORT: Is there
24 examination of Mr. Bloom?

25 MR. BESHORE: Just one additional

1 question.

2 BY MR. BESHORE:

3 Q. Mr. Bloom, you understand that any
4 proposals that were adopted here apply to DFA as
5 well as everybody in the market?

6 A. Yes, I do. Wouldn't have it any other way.

7 Q. Thank you.

8 MR. BESHORE: That's all. The
9 witness is available for cross.

10 JUDGE DAVENPORT: Gentlemen?

11 Apparently, Mr. Bloom, you get a free ride.
12 There are some other individuals who have
13 approached me over a period of time that they do
14 have scheduling constraints. This possibly
15 might be a good idea or a time to take some
16 others. I understand there's someone from the
17 Farm Bureau. I also understand there's also an
18 individual back here that indicated he needed to
19 get back to his place.

20 Is there anyone else that wishes to
21 be heard at this time? Very well, please come
22 forward, sir. If you would, give your name to
23 the hearing reporter so that she can --

24 MR. LAUSIN: Charles Lausin.

25 JUDGE DAVENPORT: I'm sorry. Your

1 last name again?

2 MR. LAUSIN: Mr. Lausin.

3 JUDGE DAVENPORT: Charles Lausin?

4 MR. LAUSIN: Yes.

5 JUDGE DAVENPORT: Mr. Lausin, would
6 you please raise your right hand.

7 (Thereupon, Mr. Lausin was sworn by
8 Judge Davenport.)

9 JUDGE DAVENPORT: Very well. Please
10 be seated. Mr. Lausin, please tell the people
11 here your occupation and professional address or
12 business address.

13 MR. LAUSIN: I'm Charles Lausin.
14 I'm part of a family corporation in Geauga
15 County, Thompson, Ohio. My opening statement
16 will address some of that.

17 JUDGE DAVENPORT: Very well. You may
18 proceed.

19 MR. LAUSIN: Your Honor, it's my
20 pleasure to appear before this hearing today and
21 to provide input into this very important
22 process. My name is Charles Lausin. I'm part
23 of a fifth generation family dairy farm located
24 in Thompson, Ohio, Geauga County. We're not a
25 large group. We milk 145 cows. Additionally, I

1 am a member of the Ohio Farm Bureau Board of
2 Trustees and serve as the chair of the
3 organization's Dairy Advisory Committee. I also
4 represent Ohio on the American -- Ohio Farm
5 Bureau.

6 Members of the Ohio Farm Bureau
7 Federation who are engaged in dairy production,
8 including myself, very much appreciate this
9 opportunity to participate in this hearing and
10 express our concern over certain inequities that
11 current Mideast Federal Order language allows.
12 We also would like to thank the USDA
13 Agricultural Marketing Service for responding in
14 an expeditious and favorable manner to various
15 requests for a hearing, some of which were filed
16 by Farm Bureau members.

17 As demonstrated by our organization's
18 current policy, our membership has become
19 increasingly concerned about the negative impact
20 depooling has had on the producer price
21 differentials. We are also concerned about such
22 actions that will continue to result in
23 escalating producer pay price volatility and
24 decreased producer confidence in the Mideast
25 Federal Order. Current Order language provides

1 certain handlers the option to share in the
2 Federal Order pool when it is their financial
3 advantage and to disassociate from the pool when
4 disassociation is to their advantage.

5 Ohio Farm Bureau Federation policy
6 supports a voluntary pooling program that
7 equalizes or creates equity among and between
8 producers of a commodity priced under a Market
9 Order. Ohio Farm Bureau policy opposes the
10 concept of pool riding and other pricing
11 strategies whereby producers from different
12 Marketing Orders circumvent the intended
13 function of the Milk Marketing Orders to gain an
14 unfair pricing advantage. OFBF policy supports
15 Federal Order modification that will enhance the
16 price of milk received by producers.

17 As a brief review, approximately four
18 years ago milk check dollars came under attack
19 from outside producer milk coming into the
20 Mideast Federal Milk Marketing Order pool. This
21 diluted the value of producer milk and with it
22 the producer price differential, or PPD.
23 Producers in the Mideast Federal Order responded
24 to this situation by requesting an emergency
25 hearing from the USDA Agricultural Marketing

1 Service, Dairy Programs. This was successful
2 and beginning August 2002 pooling qualifications
3 became more stringent in the Mideast Order and
4 much of the outside milk was prevented from
5 qualifying on the pool and diluting the PPD.

6 Unfortunately, a new and equally
7 serious issue has resulted, and that is the
8 reverse side of the pool riding issue, which
9 might be the best referred to as a pool dodging
10 issue. Just as it was and still is,
11 advantageous to attach producer milk to a
12 Federal Order pool with a larger PPD value than
13 your own, it is also advantageous to remove that
14 milk from that pool when it's apparent that the
15 PPD value is going to be negative, better known
16 as depooling. Depooling of milk allows certain
17 milk producers to retain a much larger share of
18 Class III milk dollars and causes those
19 producers who cannot depool to bear the larger
20 cost. Depooling has always been a feature of
21 the Federal Milk Marketing Orders, as pooling is
22 required only of regulated Class I milk plants.
23 It has now become a problem precisely because it
24 is this large volume of extra order milk now
25 finding a convenient home on the Mideast Order

1 that is moving in and out of the Order.

2 Dairy farmers are painfully aware
3 that Federal Order Reform initiated in 2000 has
4 not put an end to the irritating and largely
5 misunderstood negative producer price
6 differential. This is why we need changes made
7 in the Mideast Federal Order 33.

8 In Federal Order 33, according to
9 data provided by the Mideast Market
10 Administrator's office, depooling reduced the
11 producer price differential received by
12 producers by as much as \$0.42 per hundredweight
13 in September 2003 and again a greater amount of
14 \$1.66 in April of 2004. According to Cameron
15 Thraen, Ohio State University Extension State
16 Specialist of Dairy Markets and Policy, an
17 estimated 1.87 billion pounds were taken out of
18 the Order, costing producers of the pool \$7.4
19 million in 2003 and 1.3 billion pounds in April
20 and May of 2004 at the estimated cost of \$21.3
21 million to pooled producers. Producers whose
22 milk remained in the Mideast pool can no longer
23 afford to bear this burden.

24 In addition to the direct cost on
25 producers' milk checks, there is an equally

1 serious problems of equity. The ability to
2 depool becomes a liability when an estimated 23
3 percent of normally pooled milk takes a walk and
4 does not contribute to the normal pricing
5 obligations, only to return when advantageous.
6 This puts Class I milk plants and their
7 producers at a serious financial disadvantage
8 compared to other plants and their milk
9 suppliers.

10 It also raises an important question.
11 How important is this extra order milk? An
12 estimated 328 million pounds of milk moved out
13 and then back into the Mideast Federal Order
14 during the period from July through October 2003
15 without causing any real disruption in the
16 market. How can this milk be essentially -- how
17 can this milk be essential to orderly marketing
18 in the Mideast Federal Order?

19 Dairy producers in the Mideast
20 Federal Order cannot afford this situation
21 anymore. Those surrounding the Federal Orders
22 have moved and are actively -- or are actively
23 seeking to adopt language that will severely
24 limit the ability to re-pool after depooling on
25 that Order. Doing so would make the Mideast

1 Order a balancing pool for others. This would
2 put dairy producers in the Mideast Federal Order
3 even at a more precarious situation than
4 currently exists, and we can no longer afford
5 the current situation. Thus, reform of the
6 Mideast Federal Order is desperately needed.

7 Two basic changes need to occur in
8 the Mideast Federal Order. First and foremost,
9 language in the respective Federal Order needs
10 to be amended to make it more difficult to
11 depool and then subsequently reenter the market
12 pool. This would address and resolve the equity
13 issue previously discussed. Additionally,
14 extensive modifications need to be made to the
15 Federal Order to address issues related to
16 pricing rules.

17 One last comment I would like to
18 make. You know, we in the producer end of dairy
19 and agriculture really are faced with a unique
20 situation. We sell everything for retail, buy
21 everything -- no, no. Sell everything at
22 wholesale, buy everything at retail and pay the
23 freight both ways. I don't mean this to be a
24 slam at the transportation adjustment, but
25 that's reality, folks, of how we as producers

1 see it.

2 Once again, thank you for allowing us
3 to come forward today and provide input into
4 this very important process that will affect the
5 economic viability and financial stability of
6 all dairy farmers in Federal Order 33. I thank
7 you very much.

8 JUDGE DAVENPORT: Very well. Your
9 statement, if you will, will be marked as
10 Exhibit 17.

11 (Thereupon, Exhibit 17 of the Mideast
12 Federal Milk Marketing Order hearing
13 was marked for purposes of
14 identification.)

15 JUDGE DAVENPORT: Are there
16 objections to its admissibility at this time?
17 Very well. If you'll give that to the hearing
18 reporter. Is there a cross-examination of this
19 witness?

20 CHARLES LAUSIN
21 of lawful age, a Witness herein, having been
22 first duly sworn, as hereinafter certified,
23 testified and said as follows:

24 CROSS-EXAMINATION

25 BY MR. BESHORE:

1 Q. Morning, Mr. Lausin. Thank you for coming
2 and testifying. Do you market your milk through
3 a cooperative association through Order 33?

4 A. Yes.

5 Q. And what cooperative is that?

6 A. Upstate Farms.

7 Q. Thank you.

8 JUDGE DAVENPORT: Other cross?

9 Mr. Vetne?

10 CROSS-EXAMINATION

11 BY MR. VETNE:

12 Q. Good morning.

13 A. Good morning.

14 Q. I'm John Vetne. I represent White Eagle
15 Marketing Federation which has as its members a
16 number of co-ops. Mr. Lausin, you referred
17 to -- I don't have your statement so I'm going
18 by memory.

19 You referred to some amount, 300,506,
20 whatever pounds of milk coming into and out of
21 the pool.

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

23 Q. What volumes of milk were you referring to?
24 What was the source of that information?

25 A. Again, it was articles that were printed in

1 the local "Farm and Dairy" publication, and also
2 figures from Ohio State --

3 Q. Okay.

4 A. -- analyzing, you know, and also just Order
5 information.

6 Q. Okay. Did you intend to distinguish
7 between the benefit or the disbenefit of
8 depooled milk originating within the Mideast
9 states and depooled milk originating elsewhere?

10 A. Could you restate that? I don't --

11 Q. Well, let me start with -- are you aware
12 that there were -- there was lots of milk
13 depooled for Class III use?

14 A. Yes.

15 Q. And are you aware that that happened for
16 producers and suppliers located within the
17 Mideast states, as well as those outside of the
18 Mideast states?

19 A. Yes.

20 Q. Were you intending to say it's -- it's not
21 as good a thing when it happens by those outside
22 and it's not such a bad thing when it happens by
23 those inside?

24 A. No. I think depooling is -- wherever it
25 occurs, unless those earnings by those handlers

1 that depooled rotate those earnings back to
2 their producers --

3 Q. Yeah. That was another question I had. Do
4 you know whether Upstate depooled milk?

5 A. Yes.

6 Q. And when Upstate depooled milk during that
7 period, did you and other members of Upstate
8 receive a benefit?

9 A. No.

10 Q. Upstate did not share those revenues with
11 you?

12 A. Not until the end of the year that -- when
13 we got our return on investment.

14 Q. Are you aware that -- of the total milk
15 that was voluntarily depooled during the months
16 of 2004, 2.3 billion pounds was depooled by
17 cooperative associations --

18 A. Uh-huh.

19 Q. -- that -- which have to share their
20 revenue with their members?

21 A. May I back up to your previous question? I
22 can't say for sure whether Upstate Farms
23 actually depooled any milk. I know for certain
24 we got a negative PPD that was substantial.

25 Q. Okay. And you understand that a negative

1 PPD would have resulted in many months even if
2 zero milk was depooled?

3 A. Correct.

4 Q. To what plant does Upstate ordinarily
5 market your milk?

6 A. It can go to a various number of handlers.
7 It can go to Dean Foods, it can go to
8 Middlefield Cheese.

9 Q. Does any of your milk go to the Upstate
10 distributing plant in Buffalo?

11 A. On rare occasion it could.

12 Q. Okay. Do you know whether -- when milk
13 goes to Dean Foods it's pooled through Dairy
14 Marketing Services?

15 A. Yes.

16 Q. Yes, you know, and, yes, it does?

17 A. Yes.

18 MR. VETNE: Okay. That's all I
19 have. Thank you.

20 JUDGE DAVENPORT: Other cross?

21 CROSS-EXAMINATION

22 BY MR. TOSI:

23 Q. Hello, Mr. Lausin. I want to thank you for
24 appearing here today, taking time out of your
25 schedule to come and testify. Just a couple of

1 questions.

2 Is there any specific proposal that we see
3 in the notice of hearing that deals with the
4 depooling issue that you or any of the other
5 folks that you're representing in particular
6 support?

7 A. We support basically what's been presented
8 so far by DFA.

9 Q. So you're supporting the DFA proposal on
10 how to handle depooling?

11 A. Uh-huh.

12 Q. Okay. Also, it was pretty clear that, if I
13 got it right, this depooling is one of the big
14 issues that you see with the need to be fixed
15 here for the Mideast?

16 A. Absolutely.

17 Q. Okay. And then one of the other things,
18 you said something about the pricing rules?

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

20 Q. What did you mean by that?

21 A. Through -- our policy development process
22 in Farm Bureau comes right from the grass roots.
23 And so as depooling became a very -- what shall
24 I say, a front burner item through the last 12
25 to 18 months, we've had numerous discussions,

1 and from those discussions the concern was not
2 only from the depooling side and so forth, but
3 the volatility again. And anything that we can
4 do through the Orders or in any way, shape or
5 form that we can do -- anything that we can do
6 to decrease some of this volatility and keep our
7 members in business is what we're -- we're
8 supporting.

9 And so I guess, you know, it's -- you know,
10 any time we -- we have a reworking of the Orders
11 or amendments, you know, there's always those
12 that try to figure out how they can use those to
13 their advantage and it generally doesn't come
14 back to the producer. So anything that can be
15 done within the rules to -- as far as guarding
16 against any adverse volatility that we can,
17 that's what we're supporting.

18 MR. TOSI: Thank you,
19 Mr. Lausin. I appreciate your explanation.
20 Thank you.

21 JUDGE DAVENPORT: Yes, Mr. Miltner.

22 CROSS-EXAMINATION

23 BY MR. MILTNER:

24 Q. Mr. Lausin, thank you again for coming. I
25 want to follow up on one of the questions that

1 Mr. Tosi had asked you. You testified that --
2 you answered a question that you supported DFA's
3 proposal on depooling.

4 Are you familiar with the other proposals
5 that have been offered by Continental and Dean
6 Foods and other organizations?

7 A. Only what I've heard so far here today --

8 Q. Okay.

9 A. -- so yes.

10 Q. If a proposal is offered that would
11 prohibit somebody who decided to depool their
12 milk from deciding to reenter the pool for a
13 period of months, 12 months or another period of
14 time under another proposal, the DFA proposal
15 seems to permit depooling of a percentage of
16 milk --

17 A. Uh-huh.

18 Q. -- and then re-pool that milk without
19 penalty the following month, do you have a
20 preference as to which one of those proposals
21 you would support?

22 A. We -- you know, we basically came and put
23 our statement before the hearing. We're waiting
24 and seeing just how the hearing goes and so
25 forth. We might have further comment later, but

1 our concern is that basically that we're at --
2 we are not in support of any quick reentry into
3 the pool. In other words, if -- it's our
4 position that it ought to be -- if you leave the
5 pool, it ought to be six months before you get
6 back and so forth.

7 Q. In the past couple of years we've had
8 periods where the negative PPD occurred and then
9 persisted for three or four months at a time.
10 And the Market Administrator prepared some
11 information, it's on Exhibit 7, Request Number
12 12, and I don't know if you've had a chance to
13 look at that.

14 The exhibit suggests that somebody could
15 depool approximately a third of their milk in
16 those situations and then after three months
17 where prices have returned to normal all that
18 milk could be put back on the pool.

19 Would that be a situation that your group
20 would support?

21 A. I'm not speaking for the organization right
22 now, but any -- you know, in basic concept we
23 are in support of DFA's policy, but, again,
24 this -- I guess I can truthfully say we're in
25 support of, yes, if they choose to depool, fine,

1 but they just can't get back in early, that's
2 all. Whether it be three -- a percentage of
3 that milk.

4 I realized it's -- I totally realize the
5 problems that go with marketing milk and
6 obligations to handlers fulfilling. You know,
7 producers and handlers need to work together
8 more than we have in the past. One isn't the
9 bad guy or the other isn't the bad guy. We're
10 one industry, we're dependent.

11 You know, the handlers are dependent on
12 producers here, we feel, in this Order and
13 therefore I totally understand all of the
14 problems that go with fulfilling the needs of
15 the market. So I think our organization would
16 be supportive of anything that benefits both
17 sides of this equation.

18 MR. MILTNER: Thank you.

19 JUDGE DAVENPORT: Is there other
20 cross-examination of this witness? Very well,
21 Mr. Lausin, if you would, you may step down.
22 You would make sure that you give your statement
23 to --

24 THE WITNESS: I have.

25 JUDGE DAVENPORT: Yes, sir?

1 MR. ROHRER: Paul Rohrer, Rohrer
2 Farms.

3 JUDGE DAVENPORT: Yes, sir. You want
4 to come up here? Raise your right hand.

5 (Thereupon, Mr. Rohrer was affirmed
6 by Judge Davenport.)

7 JUDGE DAVENPORT: Please be seated.
8 Mr. Rohrer, please tell the people here your
9 name and your business address.

10 MR. ROHRER: My name is Paul
11 Rohrer. Address -- business address is 9305
12 Rohrer Road, Orrville, Ohio.

13 JUDGE DAVENPORT: Very well. You
14 want to proceed and give us your statement?

15 MR. ROHRER: My name is Paul
16 Rohrer, and my wife Alta and I own Rohrer Farms,
17 Incorporated. We started farming in the early
18 '70s with my father and brother. Now, my wife
19 and son farm with me. The farm has been
20 operated by my family for 140-plus years. We're
21 the fifth and sixth generation farming this
22 land.

23 As I read the information from the
24 Mideast Market Administrator's office, I realize
25 that our farm has lost considerable amount of

1 money each year from the way this Order is
2 functioning. During the two months of April and
3 May 2004, we lost well over \$6,000. And that
4 comes from Exhibit 7, Request Number 5.

5 I know that the Federal Order system
6 was created to form an orderly marketing of milk
7 in the area. Cameron Thraen had written that
8 farmers in your Federal Order lose \$0.36 per
9 hundredweight on a yearly basis because of milk
10 entering from outside our Order and pooled here.
11 For our farm, this translates into another
12 \$16,000. Orderly marketing is impossible when
13 milk enters the market for only one or two days
14 a month to qualify. Distant milk qualified
15 easily does not relate the true cost of moving
16 that milk for the pay period giving a false
17 economy to all producers involved. Milk moved
18 only for price considerations fails to serve the
19 Order where my milk is sold.

20 I am asking you to set up a system
21 that serves the Order in which the milk is
22 marketed. A system protecting producers in that
23 Order from milk entering that is not sustained
24 in the market. Also, protection from milk
25 entering the market not using the blended price

1 structure when it is not to their -- when it's
2 to their disadvantage. This practice is
3 commonly referred to as voluntary depooling, the
4 result of which led to our loss in April and May
5 2004.

6 I see this as an emergency situation
7 as future projections indicate continued lower
8 prices for farmers in this Order if action is
9 delayed. As I look around the room, I see
10 plenty of knowledge that if harnessed can solve
11 this problem. The time is being taken to review
12 dialogue and record the current situation. I
13 trust after the hearing the gravity of the
14 problem, and the majority acknowledging that
15 problem, that solutions will be forthcoming.

16 I have some considerations here. Do
17 realize that ultimately farmers pay for added
18 costs; do work for the farmers within the
19 Federal Orders where the milk is produced and
20 sold; do set up more uniformity between Federal
21 Orders; do not set up more bureaucracy we
22 farmers must finance; do eliminate programs that
23 are outdated. And that is my input.

24 JUDGE DAVENPORT: Examination of
25 Mr. Rohrer? Mr. Beshore?

1 PAUL ROHRER
2 of lawful age, a Witness herein, having been
3 first duly sworn, as hereinafter certified,
4 testified and said as follows:

5 CROSS-EXAMINATION

6 BY MR. BESHORE:

7 Q. Good morning, Mr. Rohrer. Thank you for
8 coming. Who do you market your milk through?

9 A. At the present I milk -- I send the milk to
10 Smith's Dairy in Orrville which is two miles.

11 Q. Okay. As an independent producer?

12 A. As an independent producer.

13 MR. BESHORE: Okay. Thank you.

14 JUDGE DAVENPORT: Other cross?

15 Mr. Vetne?

16 CROSS-EXAMINATION

17 BY MR. VETNE:

18 Q. Morning, Mr. Rohrer.

19 A. Good morning.

20 Q. You're an independent patron --

21 A. Yes.

22 Q. -- of Smith's Dairy which is a distributing
23 plant?

24 A. Yes.

25 Q. And do you know what portion of Smith

1 Dairy's supply is from other independent agents
2 like you?

3 A. You know, I don't.

4 Q. Do you know about how much milk Smith Dairy
5 receives in a typical month?

6 A. No, I don't.

7 Q. How far are you from Smith's Dairy?

8 A. Two and a half miles, maybe three.

9 Q. You're not going to get a transportation
10 credit on your milk?

11 A. No.

12 Q. How long have you been an independent
13 producer?

14 A. Seven years.

15 Q. Have you previously belonged to a
16 cooperative?

17 A. I was with Milk Marketing, Incorporated and
18 then to DFA. Soon after that was merged I left.

19 MR. VETNE: Thank you.

20 JUDGE DAVENPORT: Any other cross?

21 Mr. Tosi?

22 CROSS-EXAMINATION

23 BY MR. TOSI:

24 Q. Mr. Rohrer, thank you for appearing today.

25 We appreciate your taking the time to come here.

1 Thank you. I had a couple questions.

2 Are there any proposals in particular that
3 you support that are under consideration here?

4 A. You know, I saw advantages in all of them
5 and I was really looking at you guys --

6 Q. Okay.

7 A. -- being able to -- well, personally I like
8 the more stringent ones. In other words, like,
9 once you depool that you stayed out longer, but
10 I'm not -- I'm not set on that necessarily. I
11 think -- I think with the wisdom you have, you
12 have the information after this hearing that
13 you'll be able to come up with it. But I would
14 like to see some -- personally I'm for more
15 stringent.

16 Q. Okay. Do you have an opinion about
17 establishment of a transportation credit playing
18 into the Order?

19 A. Yeah. I'm against that.

20 Q. You're against it?

21 A. Yes.

22 Q. Okay. And I just wanted to make sure. I
23 kind of inferred that, but I wanted to hear you
24 say it direct.

25 And do you have an opinion about just the

1 standards that say which milk can be pooled on
2 the Order? Do you think they're adequate, or do
3 you think they need to be a little tighter or
4 that they need some changing in some way to
5 better identify who's supplying the Class I
6 market?

7 A. I think it should be better identified,
8 but, you know, I'm learning a lot here today and
9 yesterday and I -- I think as we get more
10 information I would be able to answer that
11 better. At this point I'm -- I'm just taking in
12 this information.

13 MR. TOSI: Thank you,
14 Mr. Rohrer. I appreciate it.

15 JUDGE DAVENPORT: Mr. Ricciardi?

16 MR. RICCIARDI: Thank you, Your
17 Honor.

18 CROSS-EXAMINATION

19 BY MR. RICCIARDI:

20 Q. Mr. Rohrer, good morning. My name is Al
21 Ricciardi on behalf of Sarah Farms. A couple
22 questions for you. First of all, you indicated
23 that you previously were a member of DFA; is
24 that correct?

25 A. That's correct. I still have quite a bit

1 of money invested in there.

2 Q. Why did you leave DFA?

3 A. I think that would be a long answer and
4 wouldn't necessarily help this hearing.

5 Q. Okay. Was it because of problems that you
6 had with DFA?

7 A. No.

8 MR. BESHORE: Objection.

9 BY MR. RICCIARDI:

10 Q. Okay.

11 A. In fact, I was a delegate to DFA.

12 Q. Okay. One of the things that you indicated
13 is that you believe that with the number of
14 people in the room that there should be some
15 type of solution that we can advance to the
16 problem that you perceive regarding depooling.

17 Let me ask you a question based in part
18 upon the statement of Mr. Gallagher, which is
19 Exhibit 14, and I'm going to read a portion of
20 it on page 32. The middle -- the second
21 paragraph, and I'm paraphrasing, he indicates
22 that the real solution to this problem, the
23 question of depooling, is to change the manner
24 in which Order prices are announced.

25 We agree that if all Order prices were

1 announced on the same day, there would be almost
2 a negative PPD and rarely any depooling. Is
3 that a solution that you would support?

4 A. I -- I would lean toward that.

5 MR. RICCIARDI: Thank you.

6 JUDGE DAVENPORT: Other cross? Very
7 well. Mr. Rohrer, you may step down. Thank you
8 again for coming. If there are no objections,
9 Mr. Rohrer's statement has been marked Exhibit
10 18 and will be admitted into evidence at this
11 time.

12 (Thereupon, Exhibit 18 of the Mideast
13 Federal Milk Marketing Order hearing
14 was marked for purposes of
15 identification.)

16 JUDGE DAVENPORT: Is there anyone
17 else who because of time constraints needs to
18 be -- needs to have their testimony taken at
19 this time? If not, Mr. Gallagher, it looks like
20 you're back up.

21 EDWARD W. GALLAGHER
22 of lawful age, a Witness herein, having been
23 previously duly sworn, as hereinafter certified,
24 further testified and said as follows:

25 FURTHER CROSS-EXAMINATION

1 BY MR. VETNE:

2 Q. Hey, we're back. I'm John Vetne for White
3 Eagle Federation.

4 Mr. Gallagher, we left off on page 33 of
5 the 52-page statement you gave, Exhibit 14. The
6 first full paragraph, third sentence, "A handler
7 that must pool is always at a disadvantage when
8 there is a negative PPD."

9 That's not a true statement, is it?

10 A. Sure it is.

11 Q. What about the situation as you hope
12 happens? If everybody must pool -- everybody
13 must pool and there's still a negative PPD, as
14 there would have been in many months, all milk
15 had pooled, how is the handler that must be
16 pooled at a disadvantage when there's a negative
17 PPD and everybody pools?

18 A. There's no disorder -- I was going to say
19 there's no disorderly marketing conditions, but
20 there's no disadvantage at that point in time.
21 I stand corrected.

22 Q. And the negative PPD is simply a function
23 of arithmetic. It's a relationship between
24 blend pricing and Class III?

25 A. That's correct.

1 Q. Okay. It does not necessarily by itself
2 represent a loss or gain whether negative or
3 positive?

4 A. I would say you would have a hard time
5 convincing dairy farmers of that.

6 Q. I understand that. That's why I'm asking
7 you.

8 A. What I tell dairy farmers is, "I wish upon
9 them negative PPDs every month of the year
10 because that means prices are going up, demand's
11 staying strong and you're getting more money for
12 your milk."

13 Q. In fact, there was a -- a market
14 information piece that was published on the DMS
15 website that was sent to dairy farmers that
16 makes that point, that a negative PPD is not
17 negative.

18 A. Yeah. Who wrote that?

19 Q. Did you write that?

20 A. I might have.

21 Q. Okay.

22 A. I'm not sure, I might have. Thank you for
23 reading it.

24 Q. It was good. On page 35 of your statement,
25 which talks about the specifics of the proposal

1 espoused by DFA, MMPA, Dairylea and NFO, in
2 subparagraph 2, the 115 percent limitation would
3 not apply for milk of a producer coming from
4 another Order who had been previously pooled on
5 another Order if the producer had been
6 continuously pooled for three consecutive
7 months?

8 A. That is correct.

9 Q. What about a producer who comes from the
10 Mideast Order?

11 A. I'm sorry, somebody coughed.

12 Q. What about a producer who comes from the
13 Mideast Order who has been continually pooled
14 for the prior three consecutive months. Your
15 proposal, if a cooperative increased its supply
16 by more than 15 percent and did not depool,
17 would limit the ability and, in fact, depool
18 some of that milk?

19 A. There are specific provisions within the
20 proposal that if there is a -- something unusual
21 happening in the marketplace that causes that
22 change that that wouldn't be an impact. The
23 intent is not to prevent producers from being
24 pooled and we believe that the 115 percent
25 safeguard was structured in a way that would

1 prevent that particular incident from occurring.

2 Q. Would you agree with me that it would be
3 better to change the words "other Federal Order"
4 in the first line of subparagraph 2 to "any
5 Federal Order" so that no small cooperative is
6 prevented by this proposal from expanding its
7 producer membership?

8 A. I can't agree to that right now, but I
9 will -- I'm sure we will consider that and if it
10 is appropriate to do so, we will include it in
11 our brief.

12 Q. The proposal for depooling is advanced here
13 for the Mideast Order. It's been previously
14 advanced for two other Orders, the Central and
15 the Upper Midwest.

16 Would you agree with me that a -- a
17 national or multiregional cooperative that
18 depools milk in the Mideast could take that milk
19 and park it for three months in Order 5 or Order
20 7 and come back with that milk to the Mideast
21 and suffer no price consequence or pooling
22 consequence as a result of depooling?

23 A. The -- as the proposal has been written,
24 any handler that has producers could possibly do
25 that and find it -- possibly find a way of

1 associating milk in another Federal Order,
2 although the number of Orders that that is
3 available to are hopefully becoming more
4 limited.

5 We've got a couple hearings we're waiting
6 on decisions here. It happened in the Northeast
7 Order and I've got to believe that there's going
8 to be some action taken to try to prevent it in
9 some of the other Orders. We don't have
10 decisions yet, so it might not be able to happen
11 that way.

12 Q. Okay. There's no proposal pending for
13 either the adjacent Appalachian Order, the
14 nearby Southeast Order or the Southwest Order,
15 correct? That you're aware of, correct?

16 A. I'm not aware of any.

17 Q. Do you know whether DFA which markets milk
18 in all of those records has prepared or has
19 submitted a proposal for a depooling restriction
20 in those markets?

21 A. I'm not aware that they have and I got to
22 believe the incidents of depooling in the
23 Southeast are very rare.

24 Q. Is it not the case that during -- during
25 the spring of 2004 there was depooling even of

1 milk in Florida?

2 A. Yes. In Florida -- in the Southeast, but I
3 don't --

4 Q. In the Southeast there clearly was?

5 A. But I don't know who, where, what state.

6 Q. There was volumes depooled in the
7 Southeast, in the Appalachian market and the
8 southwest?

9 A. Some limited volumes I would expect were,
10 yeah.

11 Q. And is it not true that DFA/DMS, with a
12 large share of milk in all those markets, has
13 the greatest opportunity to shift milk into
14 those markets to avoid the consequence of its
15 depooling proposal in this market?

16 A. Well, just by the size of the milk that is
17 in collective business, there might be more
18 opportunity, yeah, but I'm not -- but
19 everybody -- every handler has the same
20 opportunity. Just by scale it may be different
21 by others.

22 Q. Not every handler has multihandler --
23 multi-Order operations or sales?

24 A. That's true.

25 Q. I think you indicated earlier in your

1 testimony that it's the same as the testimony
2 for the Midwest --

3 A. Well, you know what, this testimony was
4 written -- was initially drafted by Elvin. I
5 worked on it, I changed quite a few things. We
6 had a group that got together up here in Ohio
7 and we worked on it and there have been a bunch
8 of changes. So to characterize this as just
9 being Elvin's testimony that has been duplicated
10 Order by Order is incorrect.

11 Q. Okay.

12 A. I'm offended, John.

13 Q. Well, I haven't gotten to my question yet.
14 Tell me if you agree, I think this is your
15 testimony, that a cooperative association has
16 not only an economic incentive, but a fiduciary
17 obligation to its members to maximize revenues
18 by taking advantage of depooling?

19 A. A dairy farm cooperative has a fiduciary
20 responsibility to its members to maximize the
21 benefit to their members by operating under the
22 same rules and requirements of all the other
23 handlers in the area.

24 Q. And was the answer to my question no or
25 yes?

1 A. Obviously the answer was -- it's -- they
2 have a fiduciary responsibility, but the rules
3 that they abide by are the same for them as for
4 all the other handlers in the Order.

5 Q. Okay. So the answer is yes, but?

6 JUDGE DAVENPORT: Asked and answered.

7 MR. VETNE: Okay.

8 BY MR. VETNE:

9 Q. And the next question then would be, if --
10 if DFA can make money for its members, and
11 perhaps at the cost of other producers, by
12 shifting milk between markets when it's depooled
13 here, it not only may do so, but has the
14 obligation to its members to do so?

15 A. DFA has an obligation to its members to
16 maximize the returns to those members based on
17 all legal methods available to it including
18 whatever provisions are in one Order or between
19 Orders that allow it to maximize the revenues
20 for its members.

21 Q. Okay.

22 MR. VETNE: Your Honor, a bit
23 earlier in my examination I asked a series of
24 questions to which the witness responded that --
25 well, he objected, claimed proprietary,

1 confidential, trade secret, and I would like to
2 ask the Administrative Law Judge for a ruling.
3 The witness may refuse to answer a question,
4 there's no compulsory process here, but the
5 legitimacy of that objection is at issue and
6 should be part of the decision making process.

7 In both administrative proceedings
8 and judicial proceedings there is a concept
9 known as at-issue waiver. That is an interparty
10 suing somebody for the injury and places his own
11 health at issue, waives the doctor/patient
12 privilege. A person applying for disability for
13 Social Security waives the privilege for
14 doctor/patient privileges. A person suing an
15 attorney --

16 JUDGE DAVENPORT: Not as to the
17 general public, but as to that proceeding.

18 MR. VETNE: As to that
19 proceeding. In this proceeding, DFA and MMPA,
20 Dean Foods and now DairyLea and NFO have placed
21 certain things at issue, claims involving supply
22 and demand, marketing conditions, how milk is
23 pooled, how milk can be pooled easy, how milk
24 can be pooled tough.

25 The questions I asked were directly

1 addressed to that. Perhaps the most
2 comprehensive discussion of at-issue privilege
3 in a general sense, and I'll give a cite, it's
4 in "Federal Insurance Corporation v. Wise" 139
5 frd 168 from the District of Colorado in 1991.
6 It's also been applied by the Bureau of Land
7 Management in the appeal of Superior Timber in a
8 decision reported at 1979 Westlaw 40098 by the
9 FDRC and Transcontinental Pipeline at 38 FDRC
10 63042 in 1987 and by the NFC in the matter of
11 Georgia Power 1993 Westlaw 24497 and 39 NRC 469
12 from 1993.

13 JUDGE DAVENPORT: The question of
14 waived privilege and privileged information
15 which revealed trade secrets is not entirely new
16 to administrative proceedings when that
17 privilege is raised. Typically speaking in
18 hearings such as this, that privilege is
19 honored. There are other situations where that
20 privilege may be required to be divulged, but it
21 is done under circumstances where there is in
22 camera production of that type of information so
23 that could make any determination as to whether
24 there would be any unfair advantage derived from
25 the disclosure of that information. So as such,

1 I'm going to tell you that I'm not going to
2 compel this witness to testify as to those
3 questions.

4 MR. VETNE: It will be briefed.
5 Thank you.

6 JUDGE DAVENPORT: Is there other
7 cross of Mr. Gallagher?

8 MR. RICCIARDI: A couple, Your
9 Honor.

10 JUDGE DAVENPORT: Mr. Ricciardi?

11 MR. RICCIARDI: Al Ricciardi
12 representing Sarah Farms.

13 CROSS-EXAMINATION

14 BY MR. RICCIARDI:

15 Q. Good morning, Mr. Gallagher.

16 A. Good morning, Mr. Ricciardi.

17 Q. I have some questions based upon a few
18 exhibits and then some general questions, too.

19 Let me start with a question from Exhibit
20 15 if you have that in front of you. Those are
21 the series of tables and charts that were
22 submitted by DFA and others in which you
23 presented.

24 A. Yes, I have that.

25 Q. Go ahead and turn to -- I'm confused by

1 something, the -- and they're not numbered, so
2 bear with me. The first invoice for MLT Inc.

3 JUDGE DAVENPORT: Excuse me, we have
4 a possible objection.

5 MR. BESHORE: I do have an
6 objection. Your Honor, I would like to object
7 to Mr. Ricciardi's interrogation of
8 Mr. Gallagher on general issues in this
9 proceeding -- he represents -- any standing to
10 do that. He represents a producer-handler in
11 the State of Arizona who has no connection with
12 this Marketing Order in any way, shape or form.

13 Now, I certainly had no objection to
14 him asking questions yesterday with respect to
15 information about producer-handlers since that's
16 arguably generically applicable to his client's
17 interests. His client has no interest in the
18 general marketing regulation in this Order or
19 the information underlying Exhibit 15 and it
20 only prolongs -- and it's impertinent to this
21 proceeding, it's only prolonging it and he
22 doesn't have standing to bring it forth and I
23 object to it.

24 MR. RICCIARDI: The only thing
25 that's prolonging it, Judge, is that objection.

1 JUDGE DAVENPORT: Why don't you
2 address the nature of the objection?

3 MR. RICCIARDI: I will, Judge. I
4 mean, my client is obviously in the dairy
5 business in general, has an interest in what
6 proceedings are occurring in the Federal Orders
7 throughout the course of this country, has been
8 involved in these proceedings because of issues
9 that have been raised specifically by DFA and is
10 entitled to inquire in general about information
11 that is being presented to the Secretary for
12 purposes of any of these proceedings, Judge.
13 And quite frankly, I'm not going to end up being
14 very long and I have only a few areas that I
15 want to explore with Mr. Gallagher.

16 JUDGE DAVENPORT: Let me ask you more
17 pertinent question. How is this question going
18 to advance the Secretary's determination in this
19 matter?

20 MR. RICCIARDI: How it -- these
21 questions are going to advance because what I'm
22 going to do is explore the basis of some of the
23 information contained in the various exhibits
24 and in the statements raised and by that
25 hopefully clarify for the Secretary the

1 information possibly which he will base his
2 decision in this area.

3 JUDGE DAVENPORT: Very well. I'll
4 allow it at this time. The Administrator can
5 always determine the extent to which it's
6 appropriate.

7 MR. RICCIARDI: Thank you, Judge.

8 THE WITNESS: Is this the --
9 (Indicating.)

10 BY MR. RICCIARDI:

11 Q. It's the first one and I was interrupted,
12 so let me see if I can draw your attention to it
13 again. The invoice that I'm asking about is
14 invoice 31706 which is apparently dated 2/17/05.

15 A. Yes. That's the one I have open.

16 Q. I appreciate that. Thanks. And I notice
17 that it's directed to Dairy Farmers of America,
18 but -- at 3737 Embassy Parkway, with a PO Box in
19 Fairlawn, Ohio. DFA is crossed out and DMS is
20 written above it.

21 Now, was this invoice directed to Dairy
22 Farmers or DMS?

23 A. I can't help you. Sorry.

24 Q. Does DMS maintain its office at the same
25 exact location as Dairy Farmers of America?

1 MR. BESHORE: Asked and answered
2 previously.

3 THE WITNESS: Yes.

4 JUDGE DAVENPORT: You can answer.

5 MR. RICCIARDI: Thank you.

6 BY MR. RICCIARDI:

7 Q. Now --

8 A. Is that all for that one?

9 Q. That's all for that one. Thanks. I
10 appreciate it. Let me ask you, and to help you
11 out to tell you where I'm getting some of this
12 information from, take a look at page 54 of your
13 statement and I'll actually go back to page 32,
14 also, but let me preface my question with a few
15 basic questions based upon what you've said
16 here.

17 It's the position of DFA and others as set
18 forth in Exhibit 14 in the statement that you
19 presented that depooling itself is disorderly,
20 correct?

21 A. Correct.

22 Q. And it's the position of DFA that depooling
23 creates market disruption, correct?

24 A. Correct.

25 Q. Now, if the proposals set forth by DFA and

1 others are adopted, depooling could still occur?

2 A. Correct.

3 Q. Depooling therefore, a disorderly
4 condition, will still occur even if these are
5 implemented, correct?

6 A. The extent of depooling that could occur if
7 this proposal is adopted will be mitigated,
8 lessened; the severity lessened and at that
9 point in time I would have to review what has
10 actually happened once we see some months of
11 this working before I can really then make a
12 statement whether there continues to be
13 disorderly marketing conditions because of the
14 possible occurrence of depooling.

15 Q. Okay. But what we're saying, though, is
16 depooling will still occur even if your
17 proposals are --

18 A. It could. I don't want to say will. It
19 could. The 115 percent rule means you depool in
20 one month and you're not going to bring it all
21 back in the next month, and that creates a
22 different financial implication than exists now
23 and this could result in there not being
24 depooling very often, if at all.

25 Q. Now, on the other hand on page 32, you.

1 Provide us with a solution to the problem
2 in the middle of the page which is if, in fact,
3 you change the announce days with regard to the
4 pricing, you say there would almost never be a
5 negative PPD and rarely any depoolment, correct?
6 A. That was stated, yes.
7 Q. Okay. Is that your statement, or is that
8 Mr. Hollon's statement?
9 A. We both believe that.
10 Q. Both of you believe that?
11 A. Brethren in that.
12 Q. And, therefore, do you intend to present a
13 proposal to change the pricing structure, the
14 announced pricing date?
15 A. Not today.
16 Q. At any time?
17 A. I don't know.
18 Q. Is there a reason why it hasn't been
19 proposed thus far?
20 A. Yes. We have -- it's -- it's much more
21 difficult than the words in the paper indicate.
22 And actually, I think some of the words in the
23 paper did indicate in the statement that there
24 are a lot of issues involved in preventing a
25 negative PPD that in the end may create more

1 disorderly marketing conditions than the PPDs --
2 negative PPDs themselves create even though
3 there is not a single farmer member, I believe,
4 that would like to see a negative PPD on their
5 milk check.

6 Q. Did DFA depool milk in the spring of '04?

7 A. Yes.

8 Q. And with regard to the financial advantage
9 obtained by DFA in the area where depooled milk
10 is, did it return any additional money to its
11 members as a result?

12 A. If there was a financial gain, any gain of
13 that would have gone back to a -- to DFA members
14 some how, some way, although I'm not -- I don't
15 know how that occurred.

16 Q. Directly to the milkshed --

17 A. I don't know how that occurred.

18 Q. -- in that area?

19 A. I don't know how -- I'm sorry I don't have
20 more information I can share with you. I just
21 don't know.

22 Q. Take a look at Exhibit Number 7, which was
23 the DFA exhibit requested by the Market -- from
24 the Market Administrator's office, and in
25 particular, I'm going to ask you about Request

1 Number 8(a) through 8(e).

2 A. I got it.

3 Q. Okay. 8(a) is a list of distributing
4 plants in a certain area of Mideast Marketing
5 Area for October of '04. And let's -- I'll have
6 you take a look at the listing of all
7 distributing plants and there's seven on that
8 page.

9 Does DFA have agreements to supply milk to
10 those distributing plants?

11 A. Oh, some of them. I'm not sure -- I'm not
12 sure if it's all of them.

13 Q. Can you tell me the ones that you're sure
14 of?

15 A. Can I look for help? I don't -- I don't
16 know the exact ones, I'm sorry.

17 Q. Are there any that you know for sure?

18 A. Well, I think that Oberlin Farms and
19 Reiter.

20 Q. Are those sole supply agreements --

21 A. I'm not seeing anybody throwing at me, so I
22 think I'm okay on those.

23 Q. And I apologize. I interrupted you. Are
24 those sole supply agreements, or are those
25 distributing plants supplied by anyone else?

1 A. I don't know that.

2 Q. The same question with regard to -- turn to
3 8(b), the eight distributing plants listed
4 there.

5 A. Again Reiter, I believe Tamarack and, I'm
6 sorry, I just am not familiar enough with the
7 particular supply arrangements at these plants
8 to feel comfortable answering those questions.

9 Q. Okay. And let's go on to 8(c).

10 A. It would be the same.

11 Q. Same thing?

12 A. Yeah, for all of them.

13 Q. Are there any on 8(c) that you can say for
14 sure there are agreements with?

15 A. With DFA?

16 Q. Yes.

17 A. Well, I know that Country Fresh in Livonia
18 is -- they do not. And Country Fresh in Flint,
19 they do not. And Liberty Dairy in Ewart, they
20 do not. But the others I am really not sure
21 about.

22 Q. Okay. Let's flip on to 8(d) and the same
23 question with regard to those seven distributing
24 plants listed there?

25 A. I know Dean Foods of Indiana, they do not.

1 I believe they do with The Kroger Company in
2 Indianapolis. And that's about as far as I can
3 go. That's beyond what I really understand.

4 Q. The Kroger Company, is that a sole supplier
5 agreement?

6 A. I don't know.

7 Q. Let's go to 8(e) then. The same question
8 with regard to those seven distributing plants
9 listed therein?

10 A. Dean Dairy Products, Sharpsville, they
11 supply, Meadow Brook Dairy, they supply. There
12 might be a little -- I don't know about the
13 others, though.

14 Q. Can you tell us by percentage how much of
15 the milk is supplied in the Mideast region by
16 DFA or its member structure?

17 A. Yeah. John had asked me that and I wasn't
18 able to give him a very good answer and
19 unfortunately I don't have a better answer for
20 you.

21 Q. Okay. DFA does have an agreement with Dean
22 Foods to provide it in the country with fluid
23 milk needs, correct?

24 A. At some of the plants.

25 Q. Is the same thing true with Kroger?

1 A. At some of the plants.

2 Q. Same thing true with Leprino Foods?

3 A. At some of the plants.

4 Q. What about the plants in this particular
5 region?

6 A. No.

7 Q. Not with regard to Leprino?

8 A. Not with regard to Leprino.

9 Q. What about Kroger?

10 A. Some of the plants.

11 Q. And Dean's?

12 A. Some of the plants.

13 Q. A couple of other items. Exhibit 14, the
14 bottom of the first page --

15 A. First page?

16 Q. Yes, sir. And let me ask some general
17 questions. Whether this statement was a
18 collaborative effect of discussions that you had
19 or something that Mr. Hollon prepared, you're
20 adopting all the statements in here as your own
21 for purposes of this hearing, correct?

22 JUDGE DAVENPORT: Asked and answered.

23 MR. RICCIARDI: Setting it up for
24 another question, Judge. I just wanted to get
25 him to confirm it.

1 THE WITNESS: Yes. Yes.

2 BY MR. RICCIARDI:

3 Q. Now, at the bottom of the page --

4 A. Unless there's an exhibit wrong that I
5 didn't put together.

6 Q. I understand. The bottom of the page, the
7 first sentence of the last paragraph on page 1,
8 it says, "The Proponents," and that would
9 include DFA, "are strong supporters of Federal
10 Milk Marketing Orders."

11 A. That is correct.

12 Q. That is correct. All right. Would that
13 include the former Western Order?

14 A. Unfortunately disorderly marketing
15 conditions existed in the Western Order and
16 there was a hearing to address those issues.
17 There were some changes offered. The changes
18 did not go far enough to address the disorderly
19 marketing conditions that existed. DFA members
20 were being harmed significantly and it was the
21 best interest of the DFA members and others in
22 the market, I'm assuming, that in the end the
23 Order was voted out because it did not address
24 appropriately the marketing conditions causing
25 disorderly marketing in that region.

1 Q. DFA and its members voted out the Western
2 Order, correct?

3 A. I don't know -- I don't know that.

4 Q. And the reason that DFA and its members
5 voted out the Western Order is because it felt
6 that it wasn't in the best interest of DFA to
7 have the Western Order, correct?

8 MR. BESHORE: Objection. Beyond
9 the scope of this hearing; irrelevant.

10 JUDGE DAVENPORT: I tend to agree.

11 MR. RICCIARDI: Your Honor, the
12 statement directly on Exhibit 14 --

13 JUDGE DAVENPORT: You've made your
14 point, counsel.

15 MR. RICCIARDI: I'm not finished
16 with my point yet, Judge.

17 JUDGE DAVENPORT: Well, let's get to
18 it quickly.

19 BY MR. RICCIARDI:

20 Q. DFA is a strong proponent of the Federal
21 Orders only when it's in the best economic
22 interest of DFA, correct?

23 A. Federal Orders are a marketing tool that
24 are beneficial to the members of Dairy Farmers
25 of America. DFA remains a strong proponent of

1 the Federal Order system. Unfortunately, there
2 was a series of -- that I'm not familiar enough
3 with, but a series of marketing conditions that
4 arose that created disorderly marketing
5 conditions that negatively impacted producers in
6 that market that the Order got voted out and I
7 don't know who voted no.

8 MR. RICCIARDI: I don't have any
9 further questions. Thanks.

10 JUDGE DAVENPORT: Very well. Are
11 there other questions? Mr. English?

12 CROSS-EXAMINATION

13 BY MR. ENGLISH:

14 Q. Morning, Mr. Gallagher. Charles English
15 for Dean Foods.

16 A. Thank you.

17 JUDGE DAVENPORT: Mr. English, before
18 you start, how long do you anticipate your
19 examination to be?

20 MR. ENGLISH: Not as long as some
21 of the previous ones.

22 JUDGE DAVENPORT: That's not exactly
23 responsive.

24 MR. ENGLISH: I certainly think
25 that it would be over before noon and maybe even

1 a quarter of 12.

2 JUDGE DAVENPORT: Very well. On that
3 basis, let's proceed.

4 MR. ENGLISH: I'll try to do
5 that.

6 BY MR. ENGLISH:

7 Q. Mr. Vetne asked you some questions about
8 the PPD, and I'm going to look at pages 26 and
9 27 and maybe 33, 34 and 35 of your statement.

10 Turning first to page 26, Mr. Vetne
11 proposed that, you know, PPD was a matter of
12 arithmetic. Do you remember that line of
13 questioning?

14 A. Yes, I do.

15 Q. Your statement that in the month of April a
16 handler unable to pool was approximately \$3.78
17 per hundredweight behind in the ability to pay
18 versus a handler that was able to depool.

19 For that handler that was behind \$3.78 per
20 hundredweight, was that a matter of arithmetic
21 for that handler?

22 A. It was more than a matter of arithmetic, I
23 would suggest. It was a matter of real hard
24 financial greenbacks.

25 Q. Is it a matter of arithmetic for the

1 handlers -- when in a response on page 33 and 34
2 you've discussed the effort or the opportunity
3 to be charged more money in order to make up for
4 the negative PPD, that's just a matter of
5 arithmetic, according to Mr. Vetne.

6 A. Yeah, it's -- and I apologize if I --

7 Q. That's okay. That was his job to lead you
8 into that and it's my job to lead you back out.

9 A. I'm not getting the significance of the
10 arithmetic question, but it does mean -- it does
11 have financial implications to producers and
12 handlers involved.

13 Q. And those financial implications are real
14 financial implications, correct?

15 A. That's correct.

16 Q. And those financial implications are what
17 have caused you and your organizations to come
18 in here asking for emergency consideration of
19 these proposals, correct?

20 A. That's correct.

21 Q. And let me emphasize that. This matter of
22 arithmetic is nonetheless an emergency for the
23 dairy farmers who serve this market every single
24 day, correct?

25 A. That is correct.

1 Q. Because they're the ones who lose when
2 somebody comes in and pools when it's good and
3 gets out when it's bad, correct?

4 A. That's correct.

5 Q. And some of those dairy farmers we've heard
6 from today are people who live and work here in
7 Ohio and supply the milk and yet they're the
8 ones who, according to a matter of arithmetic,
9 are losing money; is that correct?

10 A. That's correct. And you'll hear from more
11 of them later.

12 Q. Mr. Vetne also suggested to you that it
13 might be possible to virtually quote, unquote
14 park milk down in Orders 5 and 7 if a situation
15 results again for depooling. Do you remember
16 that line of questioning?

17 A. I do.

18 Q. Is it your experience that milk in the
19 southeast United States parks or is used for
20 fluid needs?

21 A. It's used for fluid needs.

22 Q. And, in fact, those markets are generally
23 short and even, you know, pay transportation
24 credits to get money -- to get milk into those
25 markets, correct?

1 A. That is correct.

2 Q. And those markets, unlike this market,
3 although this market has at least some
4 performance standards, have perhaps the
5 strongest performance standards in the nation,
6 correct?

7 A. That is correct.

8 Q. And meeting these performance standards is
9 a real cost for producers who would attempt to
10 park milk down there for a couple of months,
11 meeting those standards of 60 percent shipment?

12 A. Absolutely. There's some real costs
13 involved.

14 Q. Do you consider the Northeast to have a
15 depooling problem, the Northeast Order?

16 A. No, I don't.

17 Q. What makes the Northeast Order different
18 from the Mideast Order?

19 A. It has a proposal similar to our 115
20 percent proposal here that creates a financial
21 implication to a handler if they want to take
22 advantage of the depooling opportunity.

23 Q. And not getting you to say that the two are
24 the same or one is better than the other, but is
25 that producer for other markets provision in the

1 Northeast?

2 A. That's correct. That's what it's known as.

3 Q. And, therefore, in light questions by

4 Mr. Ricciardi, the expectation of this hearing

5 is if you adopt those kinds of proposal like

6 that, whether it's your 115 proposal or one of

7 the proposals in this hearing that is like or

8 akin to the Northeast proceeding, the economics

9 would be different and, therefore, as you

10 yourself said you expect less or no depooling?

11 A. Correct.

12 Q. And that's the goal?

13 A. That is the goal.

14 Q. And if we get it wrong, like we seemed to

15 have back in '01 and '02 when we were here

16 before in Ohio, I know you weren't here, we'll

17 come back and ask for another hearing, correct?

18 A. That's correct. If there's still

19 disorderly marketing conditions that create a

20 real problem we will work quickly to address

21 those.

22 MR. ENGLISH: I have no further

23 questions. I note it's 11:32.

24 JUDGE DAVENPORT: What's your

25 pleasure, gentlemen? Do we break for lunch or

1 do we try another witness?

2 MR. METZGER: Excuse me, Your
3 Honor. I have a few questions for
4 Mr. Gallagher. It won't be more than five
5 minutes, I promise.

6 JUDGE DAVENPORT: Very well.

7 CROSS-EXAMINATION

8 BY MR. METZGER:

9 Q. My name is Erick Metzger with National
10 All-Jersey.

11 A. Good morning, Erick.

12 Q. Good morning, Mr. Gallagher. Just a few
13 questions in regards to Order 33.

14 JUDGE DAVENPORT: Would you spell
15 your last name?

16 MR. METZGER: M-e-t-z-g-e-r.

17 BY MR. METZGER:

18 Q. Just a few questions in regards to Order 33
19 being able to attract milk from outside the
20 Order. I believe your testimony was that the
21 distributing plants in southern Ohio and
22 southern Indiana are in deficit regions?

23 A. Yes. That's my testimony.

24 Q. Okay. And, of course, southern Ohio and
25 southern Indiana also border on Federal Order 5?

1 A. That is correct.

2 Q. And in normal market conditions and using
3 industry average milk, that would be like 3 and
4 a half percent of fat, 2.99 percent protein,
5 Order 5 would have an advantage because of
6 higher Class I utilization and higher zone
7 differentials?

8 A. That's correct. And also, again, if it
9 happens to be low solids milk and you have a
10 choice between the non-component Order and a
11 component Order, you would look for something
12 that's in a non-component Order --

13 Q. Okay. Thank you. And shifting our --
14 another difference between --

15 A. -- unlike your members.

16 Q. Shifting -- in thinking about another
17 difference between Order 33 and Order 5 is that
18 Order 33 is a multiple component Order where
19 milk is base priced on protein and other solids
20 in addition to fat?

21 A. Correct. Whereas the southern Orders are
22 just butterfat and skim.

23 Q. Okay. Taking that into consideration, is
24 it possible that high solids milk produced
25 within the marketing boundary of Order 5, let's

1 say milk that's, oh, I don't know, 4.6 percent
2 fat, 3.6 percent protein, that that milk would
3 actually have a price advantage in Order 33
4 overcoming the disadvantage of the higher Class
5 I utilization and so forth?

6 A. It could very well.

7 Q. Okay. Do you know if the distributing
8 plants in southern Indiana and southern Ohio
9 have explored that option to try to meet their
10 needs by bringing higher solids milk into a
11 component Order?

12 A. I don't know that. I do know that the -- a
13 general Class I plant you're talking about?
14 Class I plants in general, from my experience,
15 could care less whether they got high component
16 milk or low component milk.

17 Q. I understand that, but yet the pricing
18 advantage in 33 over 5 for high component
19 milk --

20 A. It could very well -- you know, if you did
21 that comparison, which we tried to do in one of
22 our exhibits, it could very well show that based
23 on components you would be better of being in a
24 component Order as opposed to a butterfat and
25 skim Order. That is a very real responsibility.

1 I would have to have the particulars to
2 calculate one versus the other and it's going to
3 make a difference how far away from the
4 component Order you are, you know, so it could
5 very well be the outcome.

6 MR. METZGER: Okay. Thank you
7 very much.

8 JUDGE DAVENPORT: Other questions of
9 Mr. Gallagher? Yes, sir.

10 MR. TOSI: Yes. I have
11 questions, Your Honor, but I'm willing to wait
12 until after lunch to do it. It might take a
13 little bit longer than 25 minutes.

14 JUDGE DAVENPORT: Very well. What's
15 your pleasure on returning?

16 MR. BESHORE: 1:00, not before.

17 JUDGE DAVENPORT: Very well. 1:00.
18 We'll be in recess until 1:00.

19 (Thereupon, a luncheon recess was
20 taken at 11:35 a.m., with the
21 proceedings to be continued at 1:00
22 p.m.)

23

24

25

1 AFTERNOON SESSION

2 12:58 p.m.

3 JUDGE DAVENPORT: Gentlemen, if you
4 would, please take your seats and let's call the
5 session back into order.

6 Mr. Beshore, I understand that you
7 have agreed to relinquish your witness to
8 Mr. Miltner?

9 MR. BESHORE: Mr. Miltner, I
10 have, Your Honor. We're willing to accommodate
11 in the interests of other participants here so
12 Mr. Miltner has a witness.

13 JUDGE DAVENPORT: Very well,
14 Mr. Miltner?

15 MR. MILTNER: Thank you, Your
16 Honor. Thank you to the other participants for
17 making the accommodation. I would like to call
18 Gregory Speck, if I could.

19 JUDGE DAVENPORT: Very well.
20 Mr. Speck, please come forward. Please raise
21 your right hand.

22 (Thereupon, Mr. Speck was sworn by
23 Judge Davenport.)

24 JUDGE DAVENPORT: Very well. Please
25 be seated. Mr. Miltner, do you have copies of

1 the statement for any other participants here?

2 MR. MILTNER: No, Your Honor.

3 It's just a brief statement. We're going to
4 read it as if he had given it.

5 JUDGE DAVENPORT: Very well.

6 GREGORY SPECK

7 of lawful age, a Witness herein, no having been
8 first duly sworn, as hereinafter certified,
9 testified and said as follows:

10 DIRECT EXAMINATION

11 BY MR. MILTNER:

12 Q. Greg, could you state and spell your name
13 for the record and give your business address?

14 A. Gregory Speck, that's G-r-e-g-o-r-y,
15 S-p-e-c-k. And my business address is 320 West
16 Hermosa, Artesia, New Mexico.

17 Q. And, Greg, what's your occupation?

18 A. I'm operations manager of Continental Dairy
19 Products.

20 Q. And as operations manager for Continental,
21 what do your duties contain?

22 A. We handle the logistics and the scheduling
23 for the producers of Continental Dairy Products
24 and the payment to the producer. All the
25 operations except for, you know, marketing of

1 Continental's milk which is handled through DFA.

2 Q. Okay. And what's your background in the
3 dairy industry beginning with any education you
4 might have?

5 A. Graduated from Eastern New Mexico
6 University. Went to work for Farm Fresh Dairy
7 Products in Chandler, Oklahoma for 14 years, and
8 I've been with Continental Dairy Products and
9 Select Milk Producers for the last four and a
10 half years.

11 Q. And you work for Select Milk Producers in
12 similar job duties as you have for Continental?

13 A. Yes. Except we market the milk and handle
14 all aspects of the co-op.

15 Q. I understand you have a short statement.

16 A. Yes.

17 Q. Can you read that into the record right now
18 for us, please?

19 A. Okay. As I said, I'm -- my name is Gregory
20 Speck. I'm the operations manager for
21 Continental Dairy Products. I am offering this
22 testimony in support of Continental's Proposal
23 Number 5. Continental is a Capper Volstead
24 dairy with members in Ohio, Michigan and
25 Indiana. Continental's members are among the

1 largest farmers in the Order. Our members are
2 not small businesses as defined by the
3 Department, but many consider themselves as
4 small businesses and support other small
5 businesses through their purchases.

6 Our members take pride in producing the
7 highest quality milk as efficiently as possible.
8 Our members' milk is marketed through Dairy
9 Farmers of America, but the prices our members
10 receive are directly related to the uniform
11 price for Order 33. When milk is depooled from
12 the Order or distant milk is permitted to reduce
13 the Class I utilization of the Order, our
14 members suffer financially.

15 Our witnesses have presented and will
16 present compelling evidence about the damage
17 that can be caused by distant milk and the
18 ability to depool. I will save specific
19 arguments and detailed discussion of the numbers
20 for the brief -- for the briefing process, but
21 feel that it is important to address a couple of
22 points in support of Proposal 5.

23 The effects of depooling on producer income
24 are real and detrimental. The Department can
25 and should make changes to address this problem.

1 The changes should be substantial, not merely
2 symbolic or partial. Proposals 4, 6, 7 and 8
3 represent improvements over current regulations,
4 but in our opinion are not as strong as Proposal
5 5 in providing an economic disincentive to
6 depooling.

7 Our Proposal 5 would not permit a producer
8 to pool milk on Order 33 if milk from the
9 producer was depooled during the past year. Any
10 producer who would consider depooling his or her
11 milk would be forced to weigh the short-term
12 benefits from exploding a price inversion
13 against the long-term consequences of not
14 receiving the blend price for the following 10
15 or 11 months.

16 We are confident that this will dissuade
17 most producers from removing milk to the
18 detriment of the Order -- the other producers in
19 the Order. Proposal 5 makes provisions to
20 permit new producers to pull their milk
21 immediately for any producer who loses their
22 Grade A status also to pool their milk.
23 Producers may also pool their milk on their --
24 on other Orders without penalty. Unlike
25 Proposal 4, we purposely made no provisions to

1 permit a depool producer to return to the pool
2 by delivering to a distributing plant. We
3 believe that doing so would have set the
4 economic disincentives to depooling our proposal
5 is intended to create.

6 I would also like to point out that
7 Continental submitted a zone back proposal to
8 the Department for inclusion at this hearing.
9 The Department chose not to notice the proposal.
10 We believe that the problems of distant milk and
11 depooling are exacerbated by the flat pricing
12 surface of the Orders and the fact that diverted
13 milk is not priced accurately.

14 For instance, milk diverted to a pool --
15 for instance, milk diverted to a plant in New
16 Mexico but pooled on Order 33 will be priced
17 nearly identically as if it were diverted or
18 delivered to a Federal Order 33 plant. If milk
19 from such a distant farm were priced based on
20 the distance from the market area upon which it
21 is pooled, then such milk would almost certainly
22 not be brought in.

23 The zone back would depress the price of
24 distant milk by reducing the return from
25 diverted milk by the cost of delivering that

1 milk to the marketing area. That would reduce
2 the price sufficiently to keep out milk that
3 could not economically supply the Class I
4 market.

5 The various proposals before us today that
6 have sought to tighten pooling would be
7 unnecessary if the zone back were adopted.
8 Instead we are discussing well-intended efforts
9 to protect our producers that would foster
10 inefficient and uneconomic shipments of milk
11 instead of addressing the pricing problems that
12 cause our pooling problems.

13 Continental urges the Department to
14 reconsider a zone back amendment. Thank you for
15 your consideration of my testimony and our
16 proposal. This concludes my prepared
17 statements.

18 BY MR. MILTNER:

19 Q. Greg, I just want to clarify, in your
20 statement you made some comments about the zone
21 back provision that Continental made and we're
22 not asking the Department to make a decision at
23 this hearing, but that may be something they may
24 want to consider in the future, right?

25 A. Correct.

1 Q. Okay. And in your job duties as -- for
2 Continental and Select, you would agree that
3 with the testimony presented that depooling,
4 while it does provide economic benefits to
5 producers that are able to depool, is a
6 detriment to the producers on the Order as a
7 whole?

8 A. Yes, I do.

9 MR. MILTNER: I don't have any
10 other questions right now, Your Honor.

11 JUDGE DAVENPORT: Well,
12 cross-examination? Mr. Beshore?

13 CROSS-EXAMINATION

14 BY MR. BESHORE:

15 Q. Good afternoon, Mr. Speck.

16 A. Good afternoon.

17 Q. How many members does Continental Dairy
18 Products have?

19 A. Twenty-one, I believe right now.

20 Q. On what Orders is Continental's milk
21 pooled?

22 A. I believe -- I don't do the pooling myself,
23 DFA does the pooling for us, but Order 5, 7, 33
24 and maybe the Northeast; I'm not positive.

25 Q. Do you know about what portion of the time

1 it's pooled in Order 33 versus Southeast or
2 Northeast?

3 A. No, I don't.

4 Q. But all your farms are located within the
5 states of Indiana, Michigan and Ohio?

6 A. Yes, they are.

7 Q. Now, does Continental have a position on
8 Proposal 9 for transportation credits?

9 A. No, we do not. No, sir.

10 Q. When you're marketing -- when Continental's
11 milk is marketed to Orders 5 and Orders 7, does
12 it take advantage of transportation credits for
13 out-of-area milk under those Orders?

14 A. I do not know. DFA handles that portion of
15 the pooling.

16 Q. Okay. So you don't have any idea whether
17 it's able to move to those Orders because of the
18 transportation credits made available?

19 A. Not for a fact I do not.

20 MR. BESHORE: Okay. Thank you.

21 JUDGE DAVENPORT: Other examination?

22 Very well. Mr. Speck, you may step down.

23 THE WITNESS: Thank you.

24 JUDGE DAVENPORT: I understand there
25 is at least one other presenter that wishes to

1 speak.

2 MR. BESHORE: Before us?

3 JUDGE DAVENPORT: I was asking if
4 there was another presenter that wanted to make
5 a brief statement. The gentleman seated next to
6 Mr. Miltner.

7 MR. LEE: I can go after
8 Mr. Gallagher's cross. That's fine.

9 JUDGE DAVENPORT: Very well.

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

12 MR. LEE: Gary Lee with
13 Prairie Farms Dairy.

14 MR. BESHORE: Okay. I do
15 understand that Mr. Lee needs to testify this
16 afternoon and we would intend to make that
17 possible. At this time, I have six dairy farmer
18 witnesses that we would like to call before
19 bringing Mr. Gallagher back for
20 cross-examination.

21 JUDGE DAVENPORT: Very well. Unless
22 there's a strong objection, that's what we'll
23 do.

24 MR. BESHORE: Connie Finton.

25 JUDGE DAVENPORT: Would you raise

1 your right hand, please?

2 (Thereupon, Ms. Finton was sworn by
3 Judge Davenport.)

4 JUDGE DAVENPORT: Please be seated.

5 CONNIE FINTON

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

9 DIRECT EXAMINATION

10 BY MR. BESHORE:

11 Q. Ms. Finton, would you state your name and
12 spell your last name, please?

13 A. Connie Finton, "F," as in Frank, i-n-t-o-n.

14 Q. And have you prepared some remarks that you
15 would like to present for the hearing, ma'am?

16 A. Yes, I have.

17 Q. Okay. Would you proceed, please?

18 A. I am Connie Finton, and my husband and I
19 own and operate a dairy farm just outside of New
20 Philadelphia, Ohio. And that's about 30 minutes
21 from where we are here today. My husband's
22 grandfather bought the farm in 1930. His mother
23 and father operated the farm until we took over.
24 I personally have lived on the farm and milked
25 cows there since 1967. Our son is working into

1 a partnership with us and he has two sons who
2 tell us that they would like to take over the
3 farm when they grow up. As an addendum, I will
4 tell you they're only eight and ten right now,
5 so that could change.

6 We do not employ any labor outside of the
7 family, and neither my husband, son, nor I work
8 off the farm. We milk about 70 cows year round
9 and I consider us to be one form of that elusive
10 thing that USDA continues to try to define as
11 The Family Farm.

12 I serve as an elected representative of the
13 dairy farmers members of the DFA, on the Mideast
14 Council and the Corporate Board. I am chairman
15 of the Ohio Dairy Industry Forum, Vice Chair of
16 the Ohio Dairy Producers, Incorporated. I serve
17 on the Board of Trustees of ADADC Mideast, the
18 Ohio Department of Agriculture Animal Health
19 Committee.

20 I'm on the Development and Community
21 Relations Community for our local hospital and
22 was appointed by County Commissioners to advise
23 Jobs and Family Services agency. Again, as an
24 addendum, I stopped there and just to fully
25 inform you that's not all of what I do, but

1 that's enough probably to bore you and give you
2 an idea.

3 We own and farm 150 acres. We rent about
4 200 more acres and try to raise most of the
5 roughage for our cows. We do not have a cash
6 grain operation or a separate hog business or
7 other business to supplement our income;
8 therefore, our milk check is extremely important
9 to us. Not only is our milk check the income
10 that allows us to operate our business, it is,
11 in fact, what pays for food on our table.

12 Our farm provides a consistent supply of
13 milk to the Order 33 market all of the time.
14 When depooling occurs in Federal Order 33, it
15 hurts my business financially. Depooling
16 negatively impacts the economics of a market
17 area, and I believe it lends itself to more and
18 more farms losing the opportunity to be
19 successful. And that, in turn, I believe, leads
20 to the demise of dairy producers in many areas.

21 We are predominantly a Class I market.
22 Yes, we do have a good, in fact, great cheese
23 industry in our area. In fact, the mission of
24 the Ohio Dairy Industry Forum of which I am
25 chairman is, and I will quote, "To facilitate

1 the strengthening of the overall profitability,
2 competitiveness and long-term viability of
3 Ohio's dairy industry," end of quote. But milk
4 in the jug is number one around here, and we
5 need a consistent supply to keep orderly
6 marketing conditions.

7 I do understand that depooling is not the
8 cause of negative PPDs, but it does make it a
9 lot worse. According to information released by
10 the Federal Order 33 Market Administrator's
11 office, depooling negatively affected the PPD by
12 \$1.66 in April of 2004. On our farm, that was
13 \$2,826.21 that was not available to us. And I
14 remind you we only milk 70 cows.

15 When I looked at the website and the
16 reports from the Market Administrator and saw a
17 lot of milk from way outside what I consider our
18 market area and realized by the numbers that
19 only a little of it ever comes to our area, I'm
20 thinking, wait a minute, I thought this was
21 fixed when we reformed this system a few years
22 ago. I guess I was wrong.

23 We have chosen to belong to a cooperative
24 and I do not believe it's fair for my
25 cooperative to have to pay to bring milk into

1 this market when milk from other areas share in
2 our pool, but are not dependable, consistent
3 suppliers to the market.

4 When our sons were small and wanted to play
5 ball, we made it clear to them that playing ball
6 on a team was a commitment. They needed to be
7 there, prepared to play every game, not just
8 show up when they wanted to and stay home when
9 they didn't want to play. The same applies in
10 this business.

11 I also believe that all participants in the
12 pool should bear more of the cost associated
13 with serving the Class I market. As a member of
14 a cooperative that serves the Class I market,
15 that should not be our total burden; it should
16 be more equally shared. I think I saw where the
17 Market Administrator's office had projected that
18 the blend impact of the transportation credit to
19 be in the \$0.03 to \$0.04 range. I do not think
20 that would be unreasonable for the privilege of
21 being part of the pool.

22 These are serious problems and we are
23 beginning the task now of trying to remedy some
24 of them, but the process takes way too long.
25 It's a good thing that this really isn't a house

1 on fire, because with a system like this we
2 would never be able to salvage anything from
3 this fire.

4 I would urge the Secretary to expedite this
5 process so that those of us who supply the
6 Federal Order 33 market are not taken advantage
7 of by those in other Orders with earlier hearing
8 procedures.

9 On our farm, we support Proposals 1, 2, 7
10 and 9, and I think that I can honestly say that
11 I would represent all the members who have
12 elected me to serve them when I say they also
13 support that.

14 I would like to take this opportunity to
15 thank the Market Administrator's office and
16 especially the Market Administrator in this
17 Order for taking time to educate so many people.
18 I know I was at several meetings where he
19 educated people on the process and how this all
20 takes place. Again, it was in such a user
21 friendly manner, the material and the
22 information was given to us that was needed and
23 I thank the office for that.

24 BY MR. BESHORE:

25 Q. I've just one other question, Ms. Finton.

1 You identified one of the positions in which you
2 serve as a member of the Board of Trustees of
3 ADADC Mideast. Can you tell us what ADADC
4 Mideast is?

5 A. Correct. That's American Dairy Association
6 Dairy Council Mideast. It's the promotion and
7 advertising agency that serves this region.

8 Q. Okay.

9 MR. BESHORE: Thank you.
10 (Thereupon, Exhibit 19 of the Mideast
11 Federal Milk Marketing Order hearing
12 was marked for purposes of
13 identification.)

14 JUDGE DAVENPORT: Counsel,
15 Ms. Finton's statement has been marked as
16 Exhibit 19. Do you move its admission at this
17 time?

18 MR. BESHORE: I do.

19 JUDGE DAVENPORT: Without objection
20 then her statement will be admitted as Exhibit
21 19. Is there examination of this witness?

22 Ms. Finton, thank you for your testimony and
23 thank you for coming here today.

24 MR. BESHORE: The next witness I
25 would call is Bill Ramsey.

1 JUDGE DAVENPORT: Please raise your
2 right hand.

3 (Thereupon, Mr. Ramsey was sworn by
4 Judge Davenport.)

5 JUDGE DAVENPORT: Please be seated.

6 BILL RAMSEY
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. Ramsey, have you prepared a brief
13 statement to present for the hearing today?

14 A. Yes, I have.

15 Q. Okay. Would you proceed with it, please?

16 A. My name is Bill Ramsey. My address is 7632
17 Columbus, Louisville, Ohio. Louisville is
18 located in northeast Ohio, ten miles east of
19 Canton, Ohio. I am part owner and help operate
20 Paradise Valley Farms, Incorporated, a family
21 farm corporation. Other family members include
22 my father Paul, my mother Catherine, my wife
23 Debbie, my brother Gary, our two sons Michael
24 and Brian and their families. We also employ
25 four full-time employees. Our dairy was started

1 in the 1950s by Paul and Catherine. I had
2 become involved -- I became involved in 1972 and
3 I hope some day that I will be able to turn the
4 farm over to my sons, as they both wish to stay
5 on the farm. We currently have three
6 generations working on the farm with the fourth
7 generation being born. Our herd is 100 percent
8 registered Holsteins and we supply the industry
9 with seed stock. I am past president of
10 COBA/Select Sires and have been a board member
11 since 1986. I also serve on the Select Sires
12 Board of Directors and I have served on the
13 National Association of Animal Breeders Board of
14 Directors and the Council on Dairy Cattle
15 Breeding. I am a member of Paradise United
16 Church of Christ and presently am serving as
17 deacon on the church consistory. I'm also Vice
18 Chair of our church's financial committee.

19 I market my milk through DFA. I am
20 presently a delegate and have been for the last
21 four years. I believe that the Federal Milk
22 Marketing Order was designed to allow all
23 producers in a specific area to equally share in
24 the returns of all classes of milk. In the
25 month of April 2004, our negative PPD was \$3.83.

1 That month our farm produced 900,860 pounds of
2 milk. The negative PPD caused a loss of revenue
3 to us in the amount of \$34,502. Depooling does
4 not cause negative PPDs. It does, however,
5 increase the severity.

6 The Federal Order 33 Market Administrator
7 released information stating that depooling
8 negatively affected the PPD by 1.66 in April of
9 2004. Our 900,860 pounds of milk shipped
10 equaled a loss of \$14,954. \$0.74 in May 2004,
11 times the 907,232 pounds of milk equaled a loss
12 of \$6,713, and the \$0.29 in December 2004, times
13 the 943,043 pounds equaled a loss of \$2,734,
14 making a three month total revenue loss of
15 \$24,402.

16 As family farms, we ride out the times that
17 our milk prices do not cover the cost of
18 production. If we are expected to take the
19 market lows, we cannot afford to lose the market
20 highs. Current depooling practices reduce those
21 market highs.

22 It is my understanding there's quite a lot
23 of distant milk pooled on the Federal Order 33
24 market, but very little of it is actually
25 delivered into the market. My cooperative is

1 the main supplier to the fluid market. It is
2 not reasonable that my co-op should bear this
3 cost when I know milk from Wisconsin and other
4 states shared in our pool, but delivered very
5 little milk. The Order rules should reflect
6 economic reality, both for the local producer
7 and the producers from a different Order.
8 Delivering real milk costs money.

9 As a member of the co-op, I help bear the
10 brunt of the transportation costs. It would
11 seem fair to me that the entire market should
12 help bear more of the cost to supply the fluid
13 market.

14 The current conditions in this Order are
15 costing our family farm real dollars. I would
16 appreciate if the Secretary would act upon my
17 concerns stated above with the utmost urgency.

18 In summary, I support Proposals 1, 2, 7 and
19 9. Thank you for listening to my concerns and I
20 appreciate your time.

21 BY MR. BESHORE:

22 Q. Mr. Ramsey, there was some information in
23 the written statement -- by the way, who
24 prepared this, the two-page statement that you
25 read?

1 A. I did. My dad's a former director of MMI,
2 and we've talked zone prices for years while we
3 milked cows.

4 Q. Great. There was some information that I'm
5 not sure you read which said how many cows you
6 milk and the size of your farm. Can you --

7 A. Did I miss that?

8 Q. Well, I didn't -- I don't think I heard it,
9 but I want to make sure it's in --

10 A. I got confused there. I apologize. I'm a
11 little nervous here. Yeah, we milk 380 cows, 3
12 times a day, we farm about 1,300 acres.

13 Q. Okay. Now, you --

14 A. And I -- our milk generally goes to
15 different markets. Some days it may go to Smith
16 Dairy, some days to Reiter in Akron, Alpine
17 Dairy, we've been to Sharpsville, we go to
18 Farmers Cheese. We never know from one day to
19 the next where the milk's going to go.

20 Q. Wherever it might be needed?

21 A. Wherever it might be needed.

22 Q. You indicated you have some employees at
23 the farm.

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

25 Q. And I don't know if you identified them or

1 not, but --

2 A. Yeah. We have four full-time employees.

3 One of them's been with us 16 years; the other

4 three's been with us more than five years.

5 Q. You said you're a delegate for Dairy

6 Farmers of America and have been for four years.

7 What's a "delegate"?

8 A. Well, delegate, we meet as -- in our area

9 and learn what's going on in the co-op. Then we

10 go to the annual meeting in Kansas City once a

11 year, plus two other delegate members.

12 Q. How do you become a delegate?

13 A. Elected by the farmers in my area.

14 Q. The other farmers who are DFA members?

15 A. Yes. DFA.

16 Q. And then as a delegate you are a voting

17 representative?

18 A. Yeah, voting representative for my area for

19 the intermediate.

20 Q. Okay. And that representative process of

21 the cooperative is the means by which it

22 formulates its policies?

23 A. Yes, sir.

24 MR. BESHORE: Thank you.

25 (Thereupon, Exhibit 20 of the Mideast

1 Federal Milk Marketing Order hearing
2 was marked for purposes of
3 identification.)

4 JUDGE DAVENPORT: Mr. Ramsey's
5 statement has been marked Exhibit 20. Are there
6 objections to its admission? It will be
7 admitted into evidence at this time. Are there
8 questions for Mr. Ramsey? Very well,
9 Mr. Ramsey, thank you for taking the time to
10 come here and give us your testimony. You'll be
11 excused.

12 MR. BESHORE: I call next John
13 Hathaway.

14 JUDGE DAVENPORT: Raise your right
15 hand.

16 (Thereupon, Mr. Hathaway was sworn by
17 Judge Davenport.)

18 JUDGE DAVENPORT: Please be seated.

19 JOHN R. HATHAWAY, JR.,
20 of lawful age, a Witness herein, having been
21 first duly sworn, as hereinafter certified,
22 testified and said as follows:

23 DIRECT EXAMINATION

24 BY MR. BESHORE:

25 Q. Now, Mr. Hathaway, do you have some remarks

1 that you've personally prepared to present for
2 the hearing today?

3 A. My wife and I.

4 Q. Your wife.

5 A. I write it up and she tweaks it.

6 JUDGE DAVENPORT: Smart man.

7 BY MR. BESHORE:

8 Q. Would you proceed to present that joint
9 work product?

10 A. Yes, sir. My name is John R. Hathaway,
11 Jr., and my address is 5143 Jaysville-Saint
12 Johns Road, Greenville, Ohio, 45331-9704. I am
13 from the western part of Ohio near the state
14 line, halfway between Columbus and Indianapolis.
15 I graduated from Ohio State University in 1976
16 with a BS in Agriculture. My wife of almost 30
17 years, Deborah, is a fourth grade elementary
18 teacher. We have two adult children and three
19 grandchildren.

20 My wife and I bought our farm in 1988 and
21 restarted the dairy located on it. I milk 40
22 cows, farm approximately 300 acres and work part
23 time as a construction worker. It is my hope
24 and dream to some day pass this farm on to my
25 family.

1 I market my milk through Dairy Farmers of
2 America, DFA, Incorporated. In the past I've
3 served as a delegate to the annual meeting for
4 the DFA cooperative and I am currently a member
5 producer. My milk goes to Myer Dairy in
6 Cincinnati. I am not here today as an expert on
7 Federal Orders. And after this hearing I know
8 I'm not an expert on Federal Orders. Please
9 refer any technical questions to our attorney
10 and I thank you very much for this opportunity
11 to share my story.

12 First, I want to state that I believe
13 Market Orders were established so that all
14 producers would get an equitable share of the
15 returns from the sale of all classes of milk.
16 When the system works the way it was envisioned,
17 no one has a relative advantage. This creates
18 more stability in the market, a more healthy
19 industry as a whole, and more important to me,
20 it keeps my banker smiling.

21 Secondly, in the market, with cheese being
22 the basis for price discovery of milk, the value
23 of milk -- the value of cheese sometimes climbs
24 rapidly, and therefore cheese milk's value
25 becomes more valuable than bottling milk. This

1 creates a negative producer price differential,
2 a PPD, but depooling exacerbates this problem of
3 negative PPD. I realize that depooling by
4 itself does not cause a negative PPD. Because
5 of the way milk is paid, I prefer a small or
6 negative PPD since it means milk prices are
7 going up and I really like it when the milk
8 prices I receive are climbing. It is absolutely
9 unfair that when milk prices are steady or
10 falling I share my Class I money with every
11 producer in the Order, but when prices are
12 rapidly -- the prices are rising rapidly, excuse
13 me, and the higher priced cheese milk is pulled
14 out of the pool, I'm denied a share of this
15 money. I could utilize this income to pay my
16 suppliers as well as anybody. According to the
17 Federal Order Market Administrator, depooling
18 cost me \$1.66 per cent weight in April, which
19 was \$908.55; \$0.74 per cent weight in May, which
20 was \$417.57 on that month, and \$0.29 per cent
21 weight in December, which was \$168.35, for a
22 total of \$1,488.47.

23 I contracted milk at \$12.08 in Class III in
24 November of 2003. At that time, \$12.08 was just
25 above the five and ten-year average. And as a

1 sidebar, I want to say here I understand that
2 when I contracted that I was eliminating both
3 the price going down and the price going up. I
4 understand that, but I was attempting to assure
5 myself at least an average price after two years
6 of really low prices. But because of depooling
7 I was paid \$8.4458 on my contract milk in April;
8 \$10.4337 on my contracted in milk in May, and
9 \$11.4066 on my contracted milk in December.
10 This put my dairy operation in a distinct
11 disadvantage. In these months, my pay price was
12 well below the five and ten-year average that I
13 thought I had contracted. In fact, the April
14 price was below what I remember receiving for
15 milk when I started dairying in 1976.

16 This was a lesson that scared a number of
17 producers from contracting milk again, while
18 totally convincing many others that contracting
19 milk had been a mistake in the past and was
20 something they wouldn't do in the future. If I
21 had contracted milk -- or contracted corn at
22 \$2.50 a bushel and the corn pay price went to
23 \$3, I still would have gotten my contracted
24 price of \$2.50.

25 Depooling created a situation that resulted

1 in less than my contracted milk price of \$12.08.
2 I concur with my friend, Tom Wolfe, a milk
3 producer from northwest Ohio, who compares the
4 current depooling rules with going to Las Vegas
5 and spinning the roulette wheel. After the
6 wheel stops spinning, then you place your bet.
7 The rules on depooling need revision so that the
8 distribution of money from the sale of milk is
9 equitable in times of volatile milk prices. I
10 firmly believe that you either stay in the pool
11 or you remain out. You need to make a choice
12 and deal with the results, just like I do as the
13 owner and operator on the farm.

14 In conclusion, the decisions made from the
15 testimony given today are going to affect
16 people, possibly some close to me. I help and
17 work with a good friend locally who is an
18 independent, non-cooperative producer. My
19 cooperative, as I understand it, is the main
20 supplier to the fluid milk market. As a member
21 of that cooperative, I am bearing the brunt of
22 some of these costs.

23 My sense of equality leads me to believe
24 that it is only fair to ask him and other
25 producers in the Marketing Order to share not

1 only in the returns from the sale of all classes
2 of milk, but also the cost to supply the fluid
3 milk market. I know this process could possibly
4 take a very long time, while the current
5 regulations continue to affect my farm's daily
6 operations as well as my ability to meet my
7 financial obligations. I would appreciate it
8 greatly if the Secretary would act upon my
9 stated concerns with the utmost of urgency. I
10 do favor 1, 2, 7 and 9. Thank you for
11 consideration of my concerns. I would attempt
12 to answer any questions that you may have.

13 BY MR. BESHORE: Is there anything
14 you would like to add to the statement before
15 being available for other questions.

16 THE WITNESS: I don't believe so.
17 Thank you.

18 MR. BESHORE: Thank you.

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

23 JUDGE DAVENPORT: Very well.

24 Mr. Hathaway's statement has been marked as
25 Exhibit 21. If there are no objections, it will

1 be admitted into evidence as 21.

2 Are there questions of Mr. Hathaway?

3 Very well, Mr. Hathaway, thank you for taking

4 the time to be here today and to share your

5 concerns with us.

6 MR. BESHORE: The next witness
7 will be Chester Stoll.

8 JUDGE DAVENPORT: Raise your right
9 hand.

10 (Thereupon, Mr. Stoll was sworn by
11 Judge Davenport.)

12 JUDGE DAVENPORT: Please be seated.

13 CHESTER STOLL
14 of lawful age, a Witness herein, having been
15 first duly sworn, as hereinafter certified,
16 testified and said as follows:

17 DIRECT EXAMINATION

18 BY MR. BESHORE:

19 Q. Mr. Stoll, have you presented -- have you
20 prepared a statement, brief statement for
21 presentation today?

22 A. I have.

23 Q. And it's your work product?

24 A. Yes.

25 Q. Okay. Would you proceed to present,

1 please?

2 A. My name is Chester Stoll. And I farm under
3 the farm name of C/B Stoll Dairy Farm. My
4 address is 6212 Coal Bank Road, Marshallville,
5 Ohio 44645. Marshallville is located in eastern
6 Wayne County approximately 20 miles east of
7 Wooster. I operate a family dairy and cash crop
8 farm operation. My wife Barbara and I have two
9 sons, Ralph and David, working with us in our
10 family operation. Ralph is married and has two
11 sons whom we hope will be interested in
12 continuing our farm operation some time in the
13 future. We milk around 180 cows and farm
14 approximately 800 acres. We have two full-time
15 and two part-time employees. My father and
16 grandfather milked cows on our farm in the 1930s
17 and I took over in 1973. I hope to pass the
18 farm off to my sons and grandsons some day.

19 I market my milk through National Farmers
20 Organization. I am presently on the National
21 Board of Directors and the National Dairy
22 Committee. I'm also on Ohio NFO State Board and
23 Ohio's NFO Vice President. I am not here today
24 as an expert in Federal Orders. I'm not here to
25 answer technical questions on Federal Orders.

1 Please refer any technical questions to our
2 attorney.

3 I believe the Federal Order -- Federal Milk
4 Marketing Order was designed to create a system
5 that allows all producers in a given area to
6 equally share in the returns from all classes of
7 milk. When the system operates correctly,
8 producers that supply a bottling plant and
9 manufacturing plant both share in the returns
10 from the market. This creates stability in the
11 country, and dairy farmers are not always out
12 shopping for the best markets for their milk.

13 Also, the fact that paper milk, milk that
14 is not delivered to a processor, can draw money
15 out of the hands of producers that supply a
16 market is not right. I do not share any of my
17 other income from my farm operation with someone
18 else from a different state, except for the milk
19 I produce.

20 The Order as it now exists is not working.
21 The Order needs to be modified to correct the
22 problem with pooling, depooling and pool riding.
23 In the month of April 2004, we shipped
24 260-plus-thousand pounds of milk and received a
25 negative \$3.78 PPD. Using the negative \$3.78

1 PPD, I lost \$9,894. Using the calculated number
2 from the Federal Order of 1.66 which -- from a
3 depooling loss would be \$4,305. In May 2004 we
4 shipped 257,000 pounds of milk and received a
5 negative \$1.59 PPD. Using that figure, I lost
6 \$4,098.58. Using the Federal Order number of
7 \$0.74 from depooling, it would be a \$1,905.18
8 loss. Depooling does not cause negative PPDs,
9 but it does increase the severity.

10 It is my understanding that there is quite
11 a lot of far away milk pooled on the Federal
12 Order 33 market, but very little of it is
13 actually delivered into the market. I thought
14 we fixed the problem back in 19 -- 2001. My
15 cooperative supplies milk to the fluid market.
16 It is not -- it is not reasonable that Federal
17 Order 33 farmers should bear the cost when milk
18 from Wisconsin and other states share in our
19 pool, but deliver very little milk.

20 These issues are costing my farm a lot of
21 money. Please consider dealing with these
22 issues in a very timely manner to stop these
23 losses. I would appreciate if the Secretary
24 would act upon my concerns stated above with the
25 utmost urgency.

1 BY MR. BESHORE:

2 Q. Mr. Stoll, have you -- you indicated that
3 you hold several positions within the National
4 Farmers Organization.

5 A. Yes.

6 Q. Are those elected positions?

7 A. Yes, they are.

8 Q. And they're elected by the members of
9 National Farmers Organization?

10 A. Some are elected directly by the members
11 and some are elected by the elected members.

12 Q. Okay. And those are -- that's the
13 structure that NFO as a membership, the Capper
14 Volstead organization, uses to govern itself?

15 A. Yes, it is.

16 Q. Now, are you a member of DFA?

17 A. No, sir.

18 Q. But you are supporting the proposals that
19 have been placed in the hearing here by DFA, NFO
20 and others?

21 A. Yes.

22 Q. In your view, are those proposals solely
23 for the interest of DFA, or for other dairy
24 producers including NFO as well?

25 A. I -- I believe that they are to the benefit

1 of all dairy producers in this Marketing Order.

2 MR. BESHORE: Thank you.

3 (Thereupon, Exhibit 22 of the Mideast
4 Federal Milk Marketing Order hearing
5 was marked for purposes of
6 identification.)

7 JUDGE DAVENPORT: Mr. Stoll's
8 statement has been marked as Exhibit 22. Are
9 there any objections to its admission? Very
10 well. It will be admitted at this time. Are
11 there questions of Mr. Stoll? Mr. Vetne?

12 CROSS-EXAMINATION

13 BY MR. VETNE:

14 Q. Good afternoon, Mr. Stoll. My name is John
15 Vetne. I'm counsel for White Eagle Milk
16 Producers Cooperative Federation. Just a couple
17 questions.

18 Your membership is with National Farmers
19 Organization, which is a -- not only a Capper
20 Volstead cooperative, but a 9(c) cooperative in
21 the Market Administrator's data. Do you know to
22 what agency, if any, your milk is pooled in the
23 Mideast?

24 A. It's -- we are part of the Mideast Milk
25 Marketing Agency, MEMMA.

1 Q. MEMMA?

2 A. Yes.

3 Q. And MEMMA then directs your milk and the
4 milk of other NFO members to the larger universe
5 of MEMMA distributing plants and manufacturing
6 plants?

7 A. Yes, sir.

8 MR. VETNE: Thank you.

9 JUDGE DAVENPORT: Other questions of
10 this witness? Mr. English?

11 CROSS-EXAMINATION

12 BY MR. ENGLISH:

13 Q. Good afternoon. My name is Charles English
14 for Dean Foods. Sir, do you know what entities
15 are members of MEMMA other than National Farmers
16 Organization?

17 A. I know some of them. I'm sure I've heard
18 all of them, but DFA, NFO, Foremost Farms and --
19 I believe are the three main ones.

20 Q. So Foremost Farms is a member of MEMMA
21 for -- to your knowledge, correct?

22 A. As far as I'm aware.

23 MR. ENGLISH: Thank you.

24 JUDGE DAVENPORT: Yes, sir.

25 MR. BESHORE: One follow-up on

1 Mr. English's question.

2 REDIRECT EXAMINATION

3 BY MR. BESHORE:

4 Q. Do you know whether Land O'Lakes is also a
5 member of MEMMA?

6 A. I do not know the answer to that question.

7 MR. BESHORE: Okay.

8 JUDGE DAVENPORT: Other questions of
9 Mr. Stoll? Thank you, Mr. Stoll, for coming and
10 sharing your testimony with us. You may be
11 excused. Mr. Tosi?

12 MR. BESHORE: The next witness
13 will be Earl Stitzlein.

14 JUDGE DAVENPORT: Please raise your
15 right hand.

16 (Thereupon, Mr. Stitzlein was sworn
17 by Judge Davenport.)

18 JUDGE DAVENPORT: Please be seated.

19 EARL STITZLEIN

20 of lawful age, a Witness herein, having been
21 first duly sworn, as hereinafter certified,
22 testified and said as follows:

23 DIRECT EXAMINATION

24 BY MR. BESHORE:

25 Q. Do you have a statement that you've

1 prepared to present, Mr. Stitzlein?

2 A. Yes, sir. My name is Earl Stitzlein,
3 S-t-i-t-z-l-e-i-n. My address is 8777 T R Road
4 461, Loudonville, Ohio 44842. I farm in
5 northwestern Holmes County, which is located in
6 north central Ohio about 20 miles southwest of
7 this location. My son and I operate an 80-cow
8 dairy and farm 450 acres. We consider ourselves
9 a family farm as we do the majority of work
10 ourselves with some seasonal and part-time help.

11 I'm currently President of the Independent
12 Milk Producers Association Board which markets
13 our milk through Dairy Marketing Services. I'm
14 also on the Mideast American Dairy Association
15 Dairy Council Board of Trustees, Town and
16 Country Co-op and Land O'Lakes Ag Region 4
17 Leadership Council.

18 I believe the Federal Market Order provides
19 a fair method of distributing the value of milk
20 back to the farms under Federal Order 33. I
21 also understand that the producer price
22 differential may be a negative when Class III
23 values are higher than Class I in certain
24 instances. But depooling when there is a
25 negative producer payroll difference and

1 re-pooling when it is a positive number lowers
2 our farmers, the pay price we receive.

3 Last year in Federal Order 33, according to
4 the data provided by the Mideast Market
5 Administrator's office depooling reduced the
6 producer price difference by \$1.66 in April;
7 \$0.74 in May and \$0.29 in December. The April
8 \$1.66 was almost 10 percent of my base price and
9 that was over \$2,500 of income that I didn't
10 receive.

11 I understand that our manufacturing plants
12 in FO 33 at times need to bring in outside milk
13 to meet their needs, and they should be able to
14 pool the milk brought in, but not all their milk
15 should be able to be pooled. From what I
16 understand, this is paper pooling. An example
17 is Wisconsin, which isn't in our Federal Order,
18 is usually number 2 or 3 in our FO 33 pool,
19 according to our Market Administrator letter,
20 except for the months of April, May and December
21 when I assume the Wisconsin people depooled.

22 I don't have the expertise to know the
23 language of the Federal Order rules, but I would
24 support the proposals of DFA and the Ohio Dairy
25 Producers to limit the current paper pooling and

1 depooling that has taken place in the past and
2 probably in the future when their price is to
3 their advantage. I would also encourage the
4 Federal Market Administrator to expedite this as
5 soon as possible as it is my understanding other
6 Federal Orders 30 and 32 have already gone
7 through this process and we may bear the brunt
8 of paper pooling until our rules are amended.
9 Thank you for the opportunity to address the
10 concerns of my fellow dairy producers.

11 BY MR. BESHORE:

12 Q. Mr. Stitzlein, could you tell us again the
13 name of the organization that's your milk supply
14 group?

15 A. Okay.

16 THE WITNESS: I think if I may,
17 Your Honor, give a little bit brief history of
18 our independent group. In the past, independent
19 farmers, which we have a lot in this area,
20 associated and directly sold their milk to a
21 private plant. When I first started selling my
22 milk, Rolland Reiter owned Reiter Dairy in Akron
23 and we had a group of independent farms and we
24 had a board called Independent Producers. And
25 then Rolland Reiter sold his dairy business to

1 Dean Foods. At that time, our board still, you
2 know, worked with the Dean Foods person, first
3 Paul Huston and then Dick Lance. And then two
4 years ago Dean Foods was -- Dean and -- Dean
5 Foods was merged and the new Dean Company, after
6 one year of being formed decided all it wanted
7 to do was to procure milk from individual farms.

8 So at that time we then became -- our
9 group then went to Dairy Marketing Services, and
10 Dairy Marketing Services markets our milk for
11 us. We're 179 farms, anywhere between 35 and 36
12 million pounds per month. And we're a board of
13 what I call communication and we try to get a
14 fair market value for our milk.

15 BY MR. BESHORE:

16 Q. And the position you hold with that
17 organization is?

18 A. I'm currently president of the board.

19 Q. And did you come here to speak for the
20 organization?

21 A. I came here to speak as far as representing
22 our organization.

23 Q. Okay. You're not a member of DFA?

24 A. No, I'm not a member of DFA.

25 Q. Or Michigan Milk Producers?

1 A. No.

2 MR. BESHORE: That's all the
3 questions I have for Mr. Stitzlein.

4 (Thereupon, Exhibit 23 of the Mideast
5 Federal Milk Marketing Order hearing
6 was marked for purposes of
7 identification.)

8 JUDGE DAVENPORT: Mr. Stitzlein's
9 statement has been marked 23. Any objection to
10 its admissibility? Very well. It will be
11 admitted into evidence at this time.

12 Are there questions for
13 Mr. Stitzlein? Very well, Mr. Stitzlein. Thank
14 you for coming here today and for sharing your
15 testimony. You may step down.

16 MR. BESHORE: Tom Croner.

17 JUDGE DAVENPORT: Raise your right
18 hand.

19 (Thereupon, Mr. Croner was sworn by
20 Judge Davenport.)

21 JUDGE DAVENPORT: Please have a seat.

22 TOMMY R. CRONER
23 of lawful age, a Witness herein, having been
24 first duly sworn, as hereinafter certified,
25 testified and said as follows:

1 DIRECT EXAMINATION

2 BY MR. BESHORE:

3 Q. Mr. Croner, would you -- you've prepared
4 some remarks to present today?

5 A. Yes, I have.

6 Q. Okay. And would you proceed with that,
7 please?

8 A. Thank you. My name is Tommy R. Croner,
9 C-r-o-n-e-r, and I live at 3872 Huckleberry
10 Highway, Berlin, Pennsylvania 15530. This is
11 located in Somerset County, the southwestern
12 portion of Pennsylvania. My son and I farm
13 under the name of T. Rich, Incorporated, a
14 family owned and operated dairy and potato farm.
15 My family has farmed this land since 1780, and
16 today we have a milking herd of 250 cows and
17 grow 45 acres of potatoes plus forages on the
18 700-acre tract.

19 I have been serving my fellow dairy farmers
20 since 1989 as an elected representative of a
21 dairy marketing cooperative. I have served on
22 the Corporate Board of Directors of Dairy
23 Farmers of America since its inception. I
24 currently serve as Secretary/Treasurer and
25 Chairman of the Mideast Area Council. I also

1 serve on the Board of Directors of National Milk
2 Producers Federation, Pennsylvania Dairy
3 Promotion Program, American Dairy Association
4 Dairy Council Mideast, Mideast Milk Marketing
5 Agency, National Dairy Holdings Advisory
6 Committee and numerous other related dairy
7 organizations.

8 I am here today as a dairy farmer concerned
9 about improving the equality of the Federal
10 Order system and not as an expert on Federal
11 Orders. I understand that depooling activities
12 do not cause the negative PPDs; however,
13 depooling does impact the severity of negative
14 PPDs. Additionally, it is my understanding that
15 the Federal Order system was developed to
16 provide an orderly marketing system, to allow
17 all farmers shipping to markets of all milk
18 uses, to share equally in the proceeds received
19 from the market.

20 I believe that when depooling occurs, it
21 creates an unequal distribution of market
22 proceeds undermining the Federal Order
23 objectives, allowing one classification of end
24 use to take advantage of the system by knowing
25 what the prices actually are. Later, when

1 conditions revert and it is again favorable to
2 pool, this classification can come back to share
3 in the blend. Such actions are unfair and
4 disruptive. My cooperative is criticized when
5 we depool. Our members expect that we will act
6 in their best interest at all times. We have to
7 play by the rules as a defensive move when
8 others depool and have the ability to pay higher
9 prices to their producers.

10 The Market Administrator in Federal Order
11 33 released information that indicates that
12 depooling activities reduced what the PPD would
13 have been by \$1.66 in April, \$0.74 in May and
14 \$0.29 in December of 2004. If I apply this same
15 logic to our operation, we would have received
16 an additional \$7,062, \$3,013 and \$1,280
17 respectively in 2004 had there been no
18 depooling. That would have paid our feed bill
19 for June.

20 I understand that milk from areas outside
21 of the Federal Order 33 boundaries is often
22 pooled on this market, while quite a lot of this
23 distant milk is never delivered to this market.
24 I was led to believe that this problem was fixed
25 way back in 2001. My cooperative is the major

1 supplier of milk to Federal Order 33 and it
2 bears much of the cost of servicing this market.
3 There is something wrong with this picture, when
4 milk from other states like Wisconsin share in
5 our pool when it is convenient and advantageous
6 to them. I don't want to appear selfish and
7 protectionist in my philosophy. I do not mind
8 sharing pooling dollars with others. I do mind
9 sharing pooling dollars with those who do not
10 help to serve our marketplace. We are a net
11 deficit market and need to bring milk into the
12 market from outside the area from time to time.

13 Again, referencing the Federal Order 33
14 Market Administrator data, only 6.3 percent of
15 our -- of out-of-area milk from Illinois, Iowa,
16 Minnesota and Wisconsin in October of 2004 that
17 was pooled on Federal Order 33 was actually
18 delivered to a fluid bottling plant in this
19 market.

20 Another area I would hope that you would
21 give consideration is referred to as a
22 transportation credit. My cooperative is the
23 major supplier to the Federal Order 33 fluid
24 market. Being a member of that cooperative, I
25 bear the bulk of the cost of supplying this

1 market. I hate to keep talking about fairness,
2 but I believe that the expenses of serving a
3 marketplace are to be considered just like the
4 revenues.

5 I know that this hearing process has a
6 history of being long, drawn out and often
7 taking years; however, after meeting Deputy
8 Administrator Dana Coale at the National Milk
9 Producer's Federation Annual Meeting in Reno in
10 November and the emergency action taken in the
11 Southeast following the hurricanes of 2004, I
12 was impressed with her enthusiasm and eagerness
13 to speed up the process of these hearings and
14 her Department in general. I would hope that
15 this hearing could get the benefit of her new
16 approach.

17 Thank you for your patience and the
18 opportunity to provide testimony on behalf of
19 the nearly 2,500 DFA members of Federal Order 32
20 in support of Proposals 1, 2, 7 and 9.

21 BY MR. BESHORE:

22 Q. Mr. Croner, I think you may have misspoken
23 in your last statement. You're talking about
24 nearly 2,500 DFA members in Federal Order 33?

25 A. Yes.

1 Q. You may have said "32."

2 A. I'm sorry. I guess I have a little bit of
3 jitters along with some of the rest of my
4 colleagues.

5 Q. Now, you are a member of the Board of
6 Directors of the Mideast Milk Marketing Agency?

7 A. Yes, sir.

8 Q. Okay. Do you know the members of MEMMA at
9 the present time?

10 A. I believe so.

11 Q. Okay. And --

12 A. And they are DFA, Foremost Farms, NFO and
13 Land O'Lakes.

14 Q. Okay. Very good. Thank you for your
15 statement.

16 MR. BESHORE: I have no other
17 questions.

18 (Thereupon, Exhibit 24 of the Mideast
19 Federal Milk Marketing Order hearing
20 was marked for purposes of
21 identification.)

22 JUDGE DAVENPORT: Mr. Croner's
23 statement has been marked as Exhibit 24. Are
24 there objections to its admission? There being
25 none, it will be admitted into evidence as

1 Exhibit 24. Are there questions of Mr. Croner?

2 Mr. Croner, thank you for sharing -- excuse me.

3 Mr. Vetne? I'm sorry.

4 THE WITNESS: I thought I was
5 going to get lucky.

6 CROSS-EXAMINATION

7 BY MR. VETNE:

8 Q. Mr. Croner -- maybe later this evening.

9 You listed the MEMMA members; DFA, Foremost, NFO
10 and LOL, Land O'Lakes.

11 Is that also in order of their relative
12 share of MEMMA, or is it a different order
13 for -- if you want to rank them from one to
14 four, if you can?

15 A. Well, I would prefer not, but -- I prefer
16 not. I don't know that I have that specific
17 knowledge. I would be taking a guess and I'll
18 let that to the experts. I qualified my
19 statement here as being those of a dairy farmer
20 and I don't pretend to be an expert.

21 Q. Okay. One of your offices is on the
22 National Dairy Holdings Advisory Committee.
23 I've had an opportunity to have heard of that
24 organization for the first time from your
25 testimony, and I would like you, if you can, to

1 explain what it is and what it does and who it
2 consists of.

3 A. National Dairy Holdings, as you probably
4 know, is a subsidiary of -- or a -- I'll
5 probably get myself in trouble here. It's an
6 organization of which DFA has an interest, an
7 equity interest.

8 Q. Yes.

9 A. The Advisory Committee is a committee of
10 DFA management people and Board of Directors --
11 and Directors that receive reports from time to
12 time on the -- on business activities.

13 Q. And does it have a function other than
14 reading the reports?

15 A. It has no -- no management function, no
16 director function. It's a reporting body.

17 Q. And in an advisory capacity, as suggested
18 by the name, what kind of advice is given and to
19 whom?

20 A. I don't see -- my experience has not seen
21 any advice being given. It has been a reporting
22 mechanism.

23 Q. Okay.

24 MR. VETNE: Thank you.

25 JUDGE DAVENPORT: Yes, sir.

1 MR. BAER: Tom?

2 THE WITNESS: Hi there.

3 MR. BAER: I'm Larry Bear.

4 I'm a dairy farmer from Marshallville.

5 JUDGE DAVENPORT: Would you please
6 state your name and spell it for the hearing
7 reporter?

8 MR. BAER: Larry Baer,

9 L-a-r-r-y, B-a-e-r.

10 CROSS-EXAMINATION

11 BY MR. BAER:

12 Q. My question is: When we did this big
13 depooling back in April and there was a
14 considerable amount of money that was lost, what
15 did your co-op do when they depooled with that
16 money?

17 A. As near as I know, the cooperative
18 disbursed that money through member paychecks.

19 Q. When did they do that?

20 A. Over a period of months. I don't know
21 exactly the process, but the process is to put
22 the money back out at our members' paychecks.

23 Q. You are a part of the committee of the
24 National Holdings of DFA?

25 A. National Dairy Holdings.

1 Q. Yes. Well, if you had this here hauling
2 subsidy, wouldn't that be an advantage to you
3 guys?

4 A. I'm not prepared to answer that. I --
5 that's a technical question and I'll defer it to
6 the experts.

7 Q. I see.

8 MR. BAER: Thank you.

9 JUDGE DAVENPORT: Other questions of
10 this witness. Mr. Beshore?

11 REDIRECT EXAMINATION

12 BY MR. BESHORE:

13 Q. Just to follow up, Mr. Croner, now you're a
14 member of the Corporate Board of DFA. That's an
15 elected position, correct?

16 A. Yes, sir.

17 Q. Okay. Now -- and you oversee the
18 operations of the cooperative, the board does?

19 A. Correct.

20 Q. The employees report to you as a board, the
21 employees of the cooperatives?

22 A. Yes, sir.

23 Q. Okay. Now, if the cooperative has revenues
24 such as revenues from selling milk, pooling,
25 depooling, who does the money belong to?

1 A. The members.

2 Q. Okay. And when you say -- and the members
3 have the only ownership interest in the money,
4 correct?

5 A. Correct.

6 Q. So it gets -- it's disbursed to those
7 members one way or another at some time when
8 they own an interest in the cooperative,
9 correct?

10 A. Right.

11 Q. Now, if a private cheese plant -- you may
12 not know this question. If it's a technical one
13 that we need to get from somebody else, you just
14 tell me, but if a private cheese plant depools
15 and has revenues from depooling, whose money is
16 that, would you say?

17 A. Well, it's my understanding that it's the
18 company's money.

19 Q. Stockholders, owner?

20 A. Stockholders, the owners of the company.

21 Q. And -- but what about the dairy farmers
22 that are supplying milk to that company and
23 who -- what's their claim on it?

24 A. I would assume that's the pleasure -- at
25 the pleasure of the management of that company.

1 MR. BESHORE: Thank you.

2 JUDGE DAVENPORT: Mr. Ricciardi?

3 CROSS-EXAMINATION

4 BY MR. RICCIARDI:

5 Q. Good afternoon, Mr. Croner. I'm Al
6 Ricciardi for Sarah Farms and I have some
7 follow-up questions on the last series of
8 questions that you got.

9 Do you know whether or not the money that
10 was made by depooling by DFA, and let's call it
11 during the period April, May and December of
12 '04, stayed within this council?

13 A. I don't have any specific knowledge.

14 Q. Do you have a general knowledge?

15 A. I believe that it did, but I don't have --

16 Q. Okay. Did you indicate in your statement
17 that during those particular months that you
18 actually lost money on your farm as a result of
19 depooling?

20 A. According to the information provided by
21 the Market Administrator.

22 Q. And if money then came into the council as
23 a result of depooling by DFA, how much money did
24 you make by the depooling activity?

25 A. I'll defer that question to the experts.

1 Q. Can you give us any information whatsoever?

2 A. No.

3 Q. Do you remember actually seeing any money

4 in your milkshed as a result of the depooling

5 activities?

6 A. Not -- not specifically declared depooling

7 money.

8 Q. Did you ever notice that there was any

9 difference in your milkshed during the depooling

10 activities in April, May or December of '04?

11 A. I didn't notice.

12 Q. Did you ever provide any advice to DFA as

13 to whether or not it should depool?

14 A. No, sir.

15 Q. Do you have an opinion, whether you

16 provided it or not?

17 A. No, sir.

18 Q. You don't have one today?

19 A. Nope.

20 MR. RICCIARDI: Thanks.

21 JUDGE DAVENPORT: Other questions?

22 Thank you, Mr. Croner, for being here today and

23 you may step down. Mr. Lee?

24 MR. LEE: All right.

25 JUDGE DAVENPORT: Please raise your

1 right hand.

2 (Thereupon, Mr. Lee was sworn by
3 Judge Davenport.)

4 JUDGE DAVENPORT: Please be seated.

5 Mr. Lee, you have a prepared statement that --

6 MR. LEE: Yes. Copies are
7 available at the back. It's very brief. My
8 name is Gary Lee. I am employed by Prairie
9 Farms Dairy, Incorporated as the Vice President
10 of Procurement and Planning. Prairie Farms is a
11 Capper Volstead cooperative headquartered in
12 Carlinville, Illinois. Through outright
13 ownership and joint venture, we operate 31 milk
14 and dairy product processing plants located in
15 nine states. Four of those plants are located
16 in the Order 33 marketing area. Fluid milk
17 processing plants are located in Anderson and
18 Ft. Wayne, Indiana and Battle Creek, Michigan.
19 An unregulated ice cream novelty plant is
20 located in Lafayette, Indiana.

21 In January of 2005, that was the most
22 recent month I had information available when
23 preparing this testimony, Prairie Farms had 820
24 members, 161 of whom were located in Indiana,
25 Michigan and Ohio. All milk from those 161

1 farms was pooled on Order 33. We also purchased
2 supplemental supplies from Dairy Farmers of
3 America, Foremost Farms USA and Michigan Milk
4 Producers Association at our Order 33 pool
5 distributing plants.

6 Prairie Farms would like to speak in
7 support of Proposal 7. We do not have a problem
8 with Proposal 6, but are supporting Proposal 7
9 because of our familiarity with the Proponents.

10 Because we operate three pool
11 distributing plants pooled on Order 33, milk
12 delivered by our members and others to these
13 plants is part of the Order every month. There
14 is no choice. As a result, Prairie Farms'
15 members share their Class I utilization with all
16 milk on the market.

17 Because of weaknesses in most Orders,
18 milk that goes to standalone plants that process
19 Class II, III or IV milk does not have to be
20 pooled if it is advantageous not to do so.
21 Since we have diversions of surplus milk to
22 standalone manufacturing plants, we depool when
23 it is advantageous. Although we do this, we do
24 not feel that doing so is in the best interest
25 of Federal Order. Allowing producers who supply

1 milk to plants that are other than pool
2 distributing plants to jump in and out of the
3 Order at will causes inequity for the producers
4 who serve Class I handlers on a regular and
5 consistent basis. We strongly support an
6 adoption of either proposal 6 or 7.

7 We would also like to speak to
8 Proposal 9. We support the concept of
9 transportation credit provisions in Federal
10 Orders; however, we have concerns about Proposal
11 9 as currently presented. As we said earlier,
12 Prairie Farms has about 160 members located in
13 Indiana, Michigan and Ohio whose milk is pooled
14 on Order 33. We have no other members in those
15 states and do not pool any milk from our
16 members' located in other states on Order 33.

17 In addition, except for one milk
18 route, all of our members pooled on Order 33 are
19 located less than 75 miles from the plant that
20 they ship to. We feel that a 75-mile exclusion
21 zone is too large. It could likely lead to
22 inefficient movement of milk simply to earn
23 transportation credits.

24 Admittedly, our prospective may be
25 narrowly focused, but there will be very little

1 in this proposal for Prairie Farms members. Our
2 members will receive a lower uniform price, but
3 most will not receive any credits because we
4 have kept our procurement areas fairly close to
5 our plants.

6 For efficiency in the movement of
7 milk and equity among producers, we cannot
8 support Proposal 9 as presented at this hearing.

9 (Thereupon, Exhibit 25 of the Mideast
10 Federal Milk Marketing Order hearing
11 was marked for purposes of
12 identification.)

13 JUDGE DAVENPORT: Mr. Lee's statement
14 has been marked as Exhibit 25. Any objections
15 to its admission? There being none, it will be
16 admitted as Exhibit 25. Are there questions of
17 Mr. Lee? Mr. Vetne?

18 GARY LEE
19 of lawful age, a Witness herein, having been
20 first duly sworn, as hereinafter certified,
21 testified and said as follows:

22 CROSS-EXAMINATION

23 BY MR. VETNE:

24 Q. Afternoon.

25 A. Hi, John.

1 Q. The 161 Prairie Farmers members in Indiana,
2 Michigan and Ohio, what's their average monthly
3 production?

4 A. About 120,000 pounds of milk.

5 Q. Each?

6 A. That's an average. That runs the gamut
7 from one 800 cow farm down to about 30 or 40
8 Amish.

9 Q. Okay. So 120,000 pounds per month times
10 161 would represent Prairie Farm's pool share?

11 A. Yes. We have -- I heard you ask that this
12 morning. I did some quick checking. We had
13 about 23 million pounds on Order 33 in January.

14 Q. Thank you very much. And do you have --
15 you do not have a statement and apparently do
16 not join in support of Proposal 2; is that
17 correct?

18 A. We're remaining silent.

19 Q. Okay. And with respect to inefficient
20 movement to earn transportation credits, would it
21 be correct to say that such inefficient
22 movements, if they take place, are directly
23 proportionate to the degree to which the credits
24 reflect actual transportation costs?

25 A. Yes.

1 Q. Can you envision some circumstance in which
2 the -- just on your company's transportation
3 experience in which the proposed credits would
4 exceed transportation costs?

5 A. Perhaps, but not many.

6 Q. Okay.

7 MR. VETNE: Thank you.

8 JUDGE DAVENPORT: Other questions of
9 Mr. Lee? Mr. Beshore?

10 CROSS-EXAMINATION

11 BY MR. BESHORE:

12 Q. Gary, with respect to the transportation
13 credits, you -- milk is supplied to your plants
14 from beyond the 75 mile range, I gather?

15 A. Yes. We have one milk route that lays more
16 than 75 miles from one of our plants, and some
17 of the supplemental milk that we buy from the
18 cooperatives that I mentioned in my testimony,
19 I'm sure comes from more than 75 miles away.

20 Q. Okay. That's what I had referenced to in
21 particular. The supplemental supplies may well?

22 A. Yes, uh-huh.

23 Q. Okay. And at least with respect to the
24 supplemental supplies -- or with respect to your
25 needs to attract supplemental supplies to your

1 plant from beyond your own procurement area,
2 transportation credit would provide some
3 assistance?

4 A. Yes.

5 Q. Now, under what -- you've heard Ed
6 Gallagher's testimony on direct. You've been
7 here?

8 A. Yes.

9 Q. Okay. And given the rate of reimbursement
10 on the transportation credits that he has
11 proposed, under what circumstances would it be
12 possible that that would -- as you responded to
13 John Vetne, that that could meet actual costs or
14 even exceed actual costs of hauling?

15 A. I may have to rethink my response to
16 Mr. Vetne.

17 Q. Okay. Because the proposed -- I mean, as
18 proposed -- not as stated in the hearing notice,
19 but as proposed is less than what is stated
20 in --

21 A. Yes. As I understand, it was not intended
22 to cover the entire cost of transportation.

23 Q. Right.

24 A. And, again, we support the concept.

25 Q. Okay. And if I understood your response to

1 Mr. Vetne, as long as in terms of encouraging
2 inefficiencies, as long as the reimbursement
3 under the credits are less than the actual cost,
4 you're not going to encourage any inefficiencies
5 because --

6 A. The inefficiencies I envision are using
7 this as an opportunity -- if I've got a milk
8 route that lays 50 miles from Ft. Wayne and 80
9 miles from Anderson, and we can recoup enough
10 money from the system to subsidize that route to
11 go to Anderson instead of Ft. Wayne and then
12 somehow or other replace that with other milk,
13 we're going to have to take a look at it. And I
14 would envision others would do the same. I
15 think it's just like depooling. If there's an
16 opportunity to abuse the system, someone will
17 find a way.

18 Q. But I'm -- what I'm trying to understand is
19 what -- with the safeguards that are built into
20 the proposal, that is, 75 miles being
21 uncompensated and the rate of compensation being
22 calculated at two-thirds of cost beyond 75
23 miles, I'm trying to think of what
24 circumstances -- and maybe we need some
25 additional safeguards, but under what

1 circumstances might that compensate for
2 inefficient movement? And we may not have
3 thought of them all. Maybe smarter folks like
4 yourself --

5 A. I can think of one or two specifics in our
6 company. I can't speak for others, but I'm
7 guessing if we have opportunities to create an
8 abuse of the system others surely will.

9 Q. And what are the opportunities to abuse?

10 A. I'll leave it at that.

11 Q. Okay.

12 MR. BESHORE: Okay. Thank you.

13 THE WITNESS: Okay.

14 JUDGE DAVENPORT: Mr. Ricciardi?

15 MR. RICCIARDI: Thank you, Your

16 Honor.

17 CROSS-EXAMINATION

18 BY MR. RICCIARDI:

19 Q. Good afternoon, Mr. Lee. Al Ricciardi on
20 behalf of Sarah Farms.

21 A. Hi, Al.

22 Q. Good to see you. A couple of questions.
23 First of all, you indicate in your statement,
24 which is Exhibit 25, that Prairie Farms both
25 through outright ownership and joint ventures

1 operates 31 milk and dairy product processing
2 plants, correct?

3 A. Yes.

4 Q. Are any of the joint ventures that you are
5 mentioning here in Exhibit 25 with DFA or any of
6 its related entities?

7 A. Yes.

8 Q. Okay. And which ones?

9 A. None in Order 33.

10 Q. Okay. So the -- the plants that are
11 located in 33 are all out -- owned outright by
12 Prairie Farms?

13 A. Yes.

14 Q. How many of the other plants that you --
15 that you're reflecting here, the 31, are through
16 joint ventures with DFA?

17 A. Ten.

18 Q. Okay. Do you remember the Orders that
19 they're located in?

20 A. There's one plant in Order 5, there are
21 three plants in Order 7, the remainder are all
22 in Order 32 or located in the Order 32
23 geography. There's one unregulated ice cream
24 plant.

25 Q. Thank you. You indicate in the middle

1 portion on page 1 of your statement that Prairie
2 Farms has depooled when it is advantageous. I
3 assume that means economically advantageous?

4 A. Yes.

5 Q. Did Prairie Farms depool in April, May and
6 December of '04, if you can recall?

7 A. April and May, yes. December, no.

8 Q. And I think it was Mr. Hathaway -- you were
9 here for the testimony of the various producers?

10 A. Yes.

11 Q. I think it was Mr. Hathaway who said, and
12 my notes may not be exact, but I think it's
13 close, that actually as a producer he was okay
14 with the smaller negative PPD because it was
15 good because milk prices tended to go up. Did
16 you hear that?

17 A. Yes.

18 Q. Do you agree with that?

19 A. In general.

20 MR. RICCIARDI: I don't have any
21 further questions. Thank you.

22 JUDGE DAVENPORT: Mr. Vetne?

23 FURTHER CROSS-EXAMINATION

24 BY MR. VETNE:

25 Q. With apologies I forgot one when I had the

1 floor here. The three plants that Prairie Farms
2 operates in Order 33, what are the aggregate
3 receipts of those plants?

4 A. Approximately 35 million pounds a month.

5 Q. For all three combined?

6 A. The three combined, yes.

7 Q. And are they all supplied -- the
8 supplemental non-Prairie Farm members supplied,
9 are the ones in Indiana supplied by MEMMA?

10 A. The plant in Anderson, Indiana is supplied
11 largely by MEMMA. The plant in Ft. Wayne,
12 Indiana occasionally.

13 Q. Okay. And the plant in Battle Creek, is
14 that supplied by MEMMA?

15 A. Michigan Milk and Foremost.

16 Q. Is that part of the Michigan Milk Marketing
17 Agency in common called Producer Equalization
18 Committee, PEC?

19 A. Yes. Yes it is.

20 JUDGE DAVENPORT: Mr. Miltner?

21 CROSS-EXAMINATION

22 BY MR. MILTNER:

23 Q. Mr. Lee, I have just a couple of quick
24 questions. You're in support of the depooling
25 proposals?

1 A. Yes.

2 Q. Is it Prairie Farms' position that all
3 depooling creates disorderly marketing
4 conditions, or is there a certain amount of
5 depooling which is acceptable?

6 A. It's our position that depooling is
7 inequitable.

8 Q. Okay.

9 A. Creates inequity between the producers who
10 have the ability to do so at will and those who
11 supply the fluid market every month.

12 Q. Do your Prairie Farms plants during periods
13 of normal pricing pool roughly the same amount
14 of milk month to month?

15 A. There is an ebb and a flow in our receipts
16 from our members.

17 Q. Okay.

18 A. And then depending on how the receipts line
19 up with demand, we either have to buy
20 supplemental milk or we have to dispose of
21 surplus.

22 Q. And the receipts fluctuate just due to the
23 normal production cycles of milk?

24 A. Yes.

25 Q. Would you agree that the proposals which

1 provide 115 percent limitation on the ability to
2 pool milk during those months when production is
3 declining provide an opportunity for a handler
4 to depool more than 15 percent of their milk and
5 then pool their entire quantity the following
6 month?

7 A. I haven't done the math, Ryan. I don't
8 know for sure.

9 Q. Okay. You've been here for the whole
10 hearing?

11 A. Yes.

12 Q. You've seen statistics that the Market
13 Administrator's office prepared?

14 A. Uh-huh.

15 Q. You recall the one, it's Exhibit 7, Request
16 12 where it shows that under the 115 percent
17 limitation a handler could depool 13 percent of
18 their milk and be fully pooled the following
19 month?

20 A. Yes.

21 Q. Prairie Farms would be in a position during
22 a period of price inversion to depool 13 percent
23 of their milk and be fully pooled the following
24 month. Would that be accurate?

25 A. If we were in a position where we had 13

1 percent of our supply that could be depooled, we
2 would be -- we would be having real problems.
3 We try not to have that much surplus.

4 Q. Okay.

5 A. So I guess, yeah, your question -- or the
6 answer is yes, but in our specific case not
7 likely.

8 Q. But it's not just Prairie Farms.

9 A. Okay.

10 Q. Any handler could be in that position?

11 A. Yes.

12 Q. And that would exacerbate a negative PPD,
13 right?

14 A. It could.

15 Q. Would that -- I guess what I'm getting at,
16 do you feel that that degree of depooling would
17 potentially cause disruptive marketing
18 conditions in the Order?

19 A. It could.

20 Q. Okay. Does Prairie Farms support other
21 depooling proposals that perhaps are more
22 stringent than the 115 percent limitation in
23 particular in Proposal 5?

24 A. As I said in my testimony, we're supporting
25 Proposal 7 because we know the Proponents, had a

1 chance to hear what they were proposing before
2 the hearing. I was not familiar with your
3 proposal until the notice came out and we
4 decided to support folks that we knew.

5 Q. Okay.

6 MR. MILTNER: Thank you.

7 JUDGE DAVENPORT: Yes, Mr. English?

8 CROSS-EXAMINATION

9 BY MR. ENGLISH:

10 Q. Good afternoon, Mr. Lee.

11 A. Hi.

12 Q. With respect to your statement that you
13 have in the past depooled and acknowledged April
14 and May of last year you depooled, and
15 recognizing it's not in the best interest of
16 Federal Orders, would it be a fair
17 characterization that given the fact that
18 depooling is inequitable, the best you could do
19 in April or May was to limit the inequity as
20 applied to your producers by engaging in the
21 same activity?

22 A. Yes, exactly.

23 Q. But that you are perfectly content with the
24 idea of, you know, no one gets to speed or
25 everybody gets to speed, but you would rather

1 have nobody getting to speed --

2 A. Or stop me before I kill again.

3 Q. A little late for February, I take it,
4 correct?

5 A. Yes. Yes.

6 Q. But given the fact that it might be a
7 little late for February, do you have any
8 comments for the Secretary on the emergency
9 nature of this proceeding? Like stop you before
10 you kill again in March?

11 A. I would like to see an expedited decision,
12 but I would also like to see a well thought out
13 decision.

14 MR. ENGLISH: I appreciate that.
15 Thank you. That's all I have.

16 JUDGE DAVENPORT: Other questions?
17 Very well. Thank you, Mr. Lee, for your
18 testimony. You may step down.

19 MR. BESHORE: We are ready to
20 reclaim the witness stand for Mr. Gallagher, if
21 we may.

22 JUDGE DAVENPORT: I was going to ask
23 instead if there was anybody else that wanted to
24 be heard prior to that time. Yes, sir. Please
25 raise your right hand.

1 (Thereupon, Mr. Fleming was sworn by
2 Judge Davenport.)

3 JUDGE DAVENPORT: Please be seated.
4 Your name is Tom Fleming?

5 MR. FLEMING: That's correct.

6 JUDGE DAVENPORT: And you have a
7 prepared statement that you --

8 MR. FLEMING: Yes, I do.

9 JUDGE DAVENPORT: In addition to the
10 statement, you also have a couple of articles
11 that are attached to that?

12 MR. FLEMING: That's correct.

13 JUDGE DAVENPORT: Very well.

14 MR. FLEMING: They are being
15 passed out at this time.

16 JUDGE DAVENPORT: Your statement will
17 be marked as Exhibit 26 and the articles will be
18 marked 26 A and B.

19 (Thereupon, Exhibits 26, 26-A and
20 26-B of the Mideast Federal Milk
21 Marketing Order hearing were marked
22 for purposes of identification.)

23 JUDGE DAVENPORT: You may proceed
24 with your statement, please.

25 MR. FLEMING: Hello, Your Honor.

1 My name is Tom Fleming. I'm a dairy producer
2 and crop farmer from Allen County near Lima. My
3 son and I currently milk 160 head and farm 270
4 acres. Today I am here also as President of the
5 Ohio Dairy Producers Association, the
6 organization representing our concerns regarding
7 depooling in our local Federal Order 33. The
8 Ohio Dairy Producers and I appreciate very much
9 the opportunity to participate in this hearing
10 and express our concern over certain inequities
11 that current Federal Order language allows. We
12 also would like to thank the USDA Agricultural
13 Marketing Service for responding so quickly and
14 favorably to our request for a hearing.

15 The Ohio Dairy Producers organization
16 is a group of nonpartisan dairy producers from
17 every register region of the state who,
18 regardless of size, marketing preference, breed
19 or production strategy share a genuine concern
20 for the future of Ohio's dairy production
21 industry. The admission of the Ohio Dairy
22 Producers is to support Ohio's dairy production
23 industry, increasing productivity and optimizing
24 profitability by addressing issues that affect
25 dairy producers.

1 ODP members include approximately 50
2 individual producer members as well as
3 representatives from such organizations as Dairy
4 Farmers of America Mideast Region, COBA/Select
5 Sires, Incorporated, Ohio DHI, Continental Milk
6 Products, Independent Milk Producers
7 Association, Ohio Jersey Association, CRI/Genex,
8 Incorporated and the Ohio Grange. Together we
9 represent a wide range and vast portion of dairy
10 producers in Ohio on a broad range of issues.

11 Recently our membership has become
12 increasingly concerned over the negative impact
13 depooling has had on producer price
14 differentials. We're also concerned that such
15 actions will continue to enhance producer pay
16 price volatility and decrease producer
17 confidence in the Federal Order 33 market
18 structure. Current Order language provides
19 certain handlers the option to share in the
20 Federal Order pool when it is to their financial
21 advantage and to disassociate from the pool when
22 it is to their advantage.

23 In Federal Order 33, according to
24 data provided by the Mideast Market
25 Administrator's office, depooling reduced the

1 producer price differential received by
2 producers by as much as \$0.42 in September of
3 2003 and an even greater amount of \$1.66 in
4 April of 2004. The Ohio State University
5 Extension State Specialist for Dairy Markets and
6 Policy, Cameron Thraen, has estimated that \$1.87
7 billion pounds were taken out of Federal Order
8 33 costing producers in the pool \$7.4 million in
9 2003 and 1.3 billion pounds in April and May of
10 2004, at an estimated cost of \$21.3 million to
11 pooled producers. And those are the exhibits
12 that were passed out.

13 ODP believes that the current Federal
14 Order 33 language needs to be modified to help
15 ensure that those producers who wish to
16 regularly supply the market and share in the
17 Federal Order pool are not damaged by those who
18 choose to do so only occasionally.

19 Currently Orders 30 and 32 are
20 considering proposals attempting to limit market
21 depooling. If addressed, their correction may
22 lead to larger problems for Federal Order 33 as
23 it will become the balancing pool for others if
24 nothing is done to change the current Federal
25 Order 33 language as well. Distant milk will

1 flow into the Mideast Order in an ever growing
2 volume reducing the average PPD when the uniform
3 price is above the Class III price. The large
4 volume of milk will equally disassociate itself
5 with the Federal Order 33 pool when the prices
6 are reversed causing additional economic harm to
7 pooled Federal Order 33 producers. An example
8 of this can be seen in looking at Market
9 Administrator Exhibit Number 7, Request Number 2
10 where it's recorded that 10,334,097 pounds of
11 milk -- of distant Vermont milk were quickly
12 pooled on the Mideast Order in June and just as
13 quickly disappeared in July.

14 After much consideration and
15 discussion, ODP decided to suggest two
16 proposals, Number 4 and Number 6. These
17 proposals will limit the ability of depooled
18 milk to immediately regain access back into the
19 pool. Our submitted Proposal 4 seeks to
20 establish a dairy farmer for other markets
21 provision that would encourage a year-round
22 pooling commitment and specify conditions for
23 milk that was depooled to be re-pooled.

24 To employ alternative, but still
25 accomplish the same purpose, we submitted

1 Proposal Number 6 which seeks to establish a
2 dairy farmer for other markets provision that
3 would establish a maximum pooling limit of 115
4 percent of the prior month's pool volume that
5 could be pooled in a subsequent month. This
6 proposal is very similar to Proposal Number 7
7 offered by DFA and MMPA.

8 It is ODP's position that the
9 adoption of either one of these proposals would
10 serve to rectify the situation brought about by
11 depooling and re-pooling of our large volumes of
12 milk on Federal Order 33.

13 Please consider that I -- neither I
14 nor members of the ODP Board of Directors
15 consider themselves experts in Federal Order
16 language; therefore, ODP defers to the
17 discretion of the USDA Agricultural Marketing
18 Service in developing the best wording to
19 accomplish the intent of our proposals.

20 Again, thanks for providing Ohio's
21 dairy producers the opportunity to participate
22 in this process and for your prompt
23 consideration of our proposals.

24 JUDGE DAVENPORT: Very well. The
25 exhibit has been marked Exhibit 26. I have

1 marked the March article as 26-A and the latter
2 article as 26-B. Objection to its introduction
3 at this time? It will be admitted into evidence
4 at this time then. Questions of Mr. Fleming?
5 Mr. Vetne?

6 TOM FLEMING

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

10 CROSS-EXAMINATION

11 BY MR. VETNE:

12 Q. Afternoon, Mr. Fleming. I'm John Vetne. I
13 represent White Eagle Milk Cooperative
14 Federation and others.

15 Your testimony just about the middle of the
16 second page on loss of -- to producers in the
17 pool, for example, 7.4 million in 2000 -- \$7.4
18 million in 2003 and \$21.3 million in 2004 for
19 two months, that's all derived from Cameron
20 Thraen's paper?

21 A. That's correct.

22 Q. And you haven't done any independent
23 calculation of that?

24 A. Of --

25 Q. You're relying on --

1 A. -- of those numbers? I'm relying on Cam's
2 expertise.

3 Q. And he's here?

4 A. Yes, he is.

5 Q. And maybe you can tell me, the loss which
6 you describe and this paper describes as to
7 producers remaining in the pool does not account
8 for -- any portion of that money, whether it's
9 \$21.3 million for two months of 2004, or \$7.4
10 million for 2003, does not account for any
11 portion of that money that was paid back to
12 producers on the pool by the cooperative
13 associations who depooled?

14 A. That's correct.

15 Q. Of which they were members?

16 A. That's correct.

17 Q. So you don't have any information on net
18 loss?

19 A. No. I --

20 Q. PPD plus revenue coming back to those
21 members?

22 A. No, I do not.

23 MR. VETNE: That's all I have.

24 Thank you.

25 JUDGE DAVENPORT: Other questions of

1 Mr. Fleming? Mr. Beshore?

2 CROSS-EXAMINATION

3 BY MR. BESHORE:

4 Q. Mr. Fleming, you indicated the
5 organizations on the first page of your
6 statement, organizations which are part of Ohio
7 Dairy Producers. Were they, you know,
8 unanimously in support of the position you've
9 taken today basically?

10 A. This was a consensus of the board. Our
11 biggest objective was to get this issue to the
12 table so that it would be discussed. Our
13 organization would lean toward either 6 or 7.

14 MR. BESHORE: Okay. Thank you.

15 JUDGE DAVENPORT: Other questions?
16 Very well. Thank you again, Mr. Fleming. You
17 may step down. It's about 20 of 3. Is this a
18 good time to take a break? And how long? Come
19 back at five of three or three?

20 MR. BESHORE: Five of three, Your
21 Honor.

22 JUDGE DAVENPORT: We'll be in recess
23 until five of three.

24 (Thereupon, a recess was taken.)

25 JUDGE DAVENPORT: Ladies and

1 gentlemen, if you would take your seats again.
2 We'll give the others just a few more minutes to
3 get on back in. Let me ask at this point if
4 there are any other people that are going to ask
5 to have the opportunity to cross-examine
6 Mr. Gallagher aside the government witness -- or
7 the government representatives here today?
8 Mr. Bear, did you want to be heard? Come on up.

9 EDWARD W. GALLAGHER

10 of lawful age, a Witness herein, having been
11 previously duly sworn, as hereinafter certified,
12 further testified and said as follows:

13 CROSS-EXAMINATION

14 BY MR. BAER:

15 Q. Mr. Gallagher, I'm Larry Baer.

16 A. Hi, Larry. How are you, sir?

17 Q. My questions are on issue 9. How was your
18 membership notified that this issue was going to
19 be put on the program?

20 A. Well, let's see. The DFA board members had
21 a presentation by Elvin Hollon in January about
22 it, and beyond that I'm not quite sure. We had
23 conversation with individual farmers, and beyond
24 that I'm not quite sure what kind of
25 notification went out to the membership.

1 Q. There was no letters or meetings held to
2 get information from all your farms? You have
3 quite a number of farms involved in this.

4 A. Well, you know, in -- DFA and Dairylea have
5 meetings frequently with members throughout the
6 milkshed and at those meetings a host of issues
7 are discussed. And although I wasn't present at
8 any meetings here in the Mideast area, it
9 wouldn't surprise me if these issues -- I can
10 tell you the negative PPDs and depooling are
11 issues that are discussed at member meetings.

12 And I'm fairly confident, although I wasn't
13 at the meetings, that these proposed solutions
14 or something to correct/mitigate the issues were
15 discussed with members. Whether there was an
16 exact mailing that detailed everything, I'm not
17 aware if there was.

18 Q. Okay. Now, if that proposal would go
19 through, if I understand right, that money would
20 be deducted off the Class I or off of the PPD?

21 A. This is for the transportation credit?

22 Q. Yes.

23 A. It would ultimately come off of the PPD.

24 Q. Would that be shown on the milk checks or
25 how would that -- or would that just come to the

1 surprise of producers that this is going to take
2 place?

3 A. No. The PPD would end up being whatever
4 the PPD would be, but in the announce, I'm
5 sure -- and I'm -- in other Orders that's
6 similar to this, the announcement that the
7 Market Administrator prepares to announce PPD
8 and show a calculation and there will be a item
9 that will show the money deducted from the pool
10 for this transportation credit. And whether it
11 shows the number of pounds that qualifies, I
12 don't know exactly what it will show, but it
13 will be in a publicly available document of the
14 month.

15 Q. I see.

16 MR. BAER: Okay. That's all I
17 have. Thank you.

18 THE WITNESS: You're welcome.

19 JUDGE DAVENPORT: Are there other
20 questions for Mr. Gallagher before we get to --
21 yes, sir.

22 CROSS-EXAMINATION

23 BY MR. SCHAD:

24 Q. Good afternoon.

25 A. Hi Dennis.

1 Q. My name is Dennis Schad, S-c-h-a-d. I work
2 for Land O'Lakes. Just a couple questions on
3 clarification. I'm going to start with your
4 testimony, Exhibit 14.

5 A. Uh-huh.

6 Q. And I am looking at page 35. And what I'm
7 looking at is the language of the proposal
8 itself. I'm looking at, I guess it would be,
9 (e)(4) the provision of the Market
10 Administrator.

11 Could you elaborate on that provision?

12 A. Where it says, "Milk may be considered
13 ineligible for pooling if the Market
14 Administrator determines that handlers altered
15 the reporting of such milk for the purpose of
16 evading the provisions of this paragraph," is
17 that --

18 Q. Yes.

19 A. Okay. Very good. I'll give you an
20 example, one that we discussed in preparation
21 for the hearing. If, for example, there is a
22 Class I distributing plant that has 50 million
23 pounds a month and some sort of a supply plant
24 that has 50 million pounds a month and the
25 supply plant depools all its milk, the following

1 month the deliveries from the -- you know, the
2 ones to re-qualify the following month and if
3 the deliveries from what was the depooled plant
4 all showed up at the distributing plant and the
5 distributing plant's all showed up at the
6 manufacturing plants, we would say that would be
7 gaming the system. And we would hope that the
8 Market Administrator would use this provision to
9 disqualify that and, in fact, disallow the
10 manufacturing milk from being re-pooled in that
11 manner.

12 Q. Thank you. The second question refers to
13 the Market Administrator on Exhibit 7 on Request
14 Number 4. I call your attention to March of
15 2004. Again, as I understand this exhibit
16 prepared by the Market Administrator, I took the
17 pooled pounds delivered plus the pounds that
18 were depooled, and they used the previous month
19 as at base, so actually they're testing the 115
20 percent?

21 A. Yes. Okay.

22 Q. I'll call your attention to March 2004
23 where the actual number was almost 115 percent
24 on its own. If you were in -- were you here
25 when I asked the Market Administrator's

1 representative whether that was an aggregate
2 number, or would there be some entities that
3 could have been depooled during that month
4 and --

5 A. I might have been out of the room when that
6 question was asked.

7 Q. Her response was that this was an aggregate
8 number, however, that some entities could have
9 been depooled during that month. So is it with
10 the intention to have milk that would --
11 assuming that March was a month that was all is
12 right with the world and all of the milk was
13 pooled and not depooled, is it the intention
14 that any milk that is now historically marked --
15 associated with the market be depooled?

16 A. That's an interesting question. At break
17 we were talking about that very issue. It is --
18 especially in a month where you go from 28 days
19 in February to 31 days in March and if you hit
20 the flush at the same time there could be a
21 possibility that the -- your normal pool pounds,
22 irregardless of whether there's any depooling or
23 not, could grow by more than 15 percent. And it
24 is not the intent of ours to prevent that milk
25 from being pooled.

1 And if, you know, in a particular month --
2 as of this maybe, you know, we'll consider
3 something maybe and acknowledge something on
4 brief after we have a chance to really think
5 about this some more, but perhaps, you know, if
6 there was something in March that was a
7 different number than 15 percent, that might not
8 be bad, but we want to make sure that if there
9 is milk that's depooled that that 115 percent is
10 out.

11 But the intent isn't to prevent milk
12 that -- you know, if everything was pooled in
13 January -- or in February and all the same
14 producers are in the market in March, our intent
15 isn't to force them off the pool through this
16 provision.

17 MR. SCHAD: Thank you.

18 JUDGE DAVENPORT: Any others from the
19 general audience? Mr. Tosi, I understand that
20 Ms. Taylor's going to do the first questioning?

21 MR. TOSI: Yes, sir.

22 JUDGE DAVENPORT: Very well,
23 Ms. Taylor.

24 CROSS-EXAMINATION

25 BY MS. TAYLOR:

1 Q. Good afternoon.

2 A. Hi. How are you?

3 Q. Good. Thank you. My first few questions
4 just deal kind of with some technical language
5 with your transportation credit, and if you want
6 to refer to it, it's on pages 49 and 50 of your
7 statement.

8 A. Okay. Go ahead.

9 Q. Specifically with (b)(2) which deals with
10 the netting out of transfers or diversions to
11 nonpool plants, can you kind of just expand on
12 how exactly that would work and how exactly you
13 would treat co-op transfers or diversions to
14 nonpool plants?

15 A. It's on page 49. Which one are you
16 referring to?

17 Q. Well, this part is on page 50.

18 A. (b)(2).

19 Q. (b)(2). Sorry.

20 A. Yeah. Let me see. I think it's -- you net
21 out -- I think the intent is that you -- you
22 look at the net -- net transfers at a
23 distributing plant, and if the distributing
24 plant transfers bulk milk out and receives milk
25 in, that the -- you start with, in the netting

1 process, I guess transfer two loads out and
2 receive four loads in, then you look at the two
3 most distant loads that came in and you exempt
4 them from the calculation of transportation
5 credits. Does that make more sense?

6 Q. Somewhat.

7 A. Okay.

8 Q. I guess another question would be that you
9 would understand the administrative burden then
10 on the Market Administrator's office to do that
11 netting process along with the burden and the
12 time of making all these calculations to
13 determine the transportation credit.

14 Would the Proponents of the proposal be
15 amiable if the Market Administrator found the
16 administrative burden to be a little bit much in
17 that particular month to calculate it by pool
18 time? Since you submit your requests in at the
19 same time you submit your reports in, to have a
20 delay in the payment of, you know, until the
21 next month's check?

22 A. Certainly. One of the things -- and let me
23 throw another example out. It seems like we're
24 a little bit of brainstorming here. There used
25 to be a provision in former Order 2 Marketing

1 Order for cooperative payments. And they had a
2 program where you received \$0.04 per
3 hundredweight under qualified producer receipts.
4 And whenever the milk came in at pool time, the
5 \$0.04 was paid on everything that was pooled.
6 And then a month or two later when you had
7 better information there was always milk that
8 wasn't qualified that would be calculated out
9 and in a month -- a later month there would be
10 an adjustment to the transportation credit.

11 So whether it's a one-month delay or you do
12 something like that, eventually every month
13 there's money coming out of the pool with the
14 transportation credits.

15 Q. So as long as that happened you would be
16 okay with that?

17 A. Yeah. If this -- we don't want to create
18 such an administrative burden that this becomes
19 impossible, so we're very much wanting to work
20 with you folks to make sure this happens, that
21 it's done appropriately, the appropriate
22 safeguards are in and only the money that should
23 be paid out goes out.

24 Q. Okay. An one last question. Can you just
25 expound on exactly how the market as a whole

1 will benefit from certain handlers and
2 cooperatives receiving the transportation
3 credit?

4 A. Sure. Right now the market as a whole
5 unfairly forces the costs of assuring an
6 adequate supply of fluid milk on a small number
7 of farms -- or I shouldn't say a small number of
8 farms, but less than all the farms, even though
9 all the farms benefit from deliveries of milk to
10 Class I markets because we pooled all of those
11 returns. So all the farmers are receiving the
12 benefit, but not all the farmers are paying for
13 the costs. And this is a proposal that would
14 bring a little bit more equity to the process in
15 allowing all the farmers to share in costs where
16 they all receive a benefit.

17 Additionally, Marketing Orders are designed
18 to make sure Class I milk gets to Class I
19 markets in a fair and equitable manner; and the
20 pricing surface that exists to the Order 33
21 market is fairly flat and the up zone values,
22 the transportation differentials range in order
23 from generally where the milk is shipped to
24 where the milk is received. Generally don't
25 allow enough increase in value to cover the

1 additional transportation costs. And I think
2 there's enough evidence in the record to prove
3 that.

4 And it is our opinion that the Marketing
5 Orders should cover all that cost. We're not
6 asking for all that cost to be covered. In
7 fact, we're only asking in the end for a small
8 proportion of that cost to be covered. And I
9 think our proposal has quite a few safeguards in
10 it to make sure that some of the concerns Gary
11 Lee mentioned -- wouldn't it be great if it was
12 Gary Lee of Dairylea -- Gary Lee mentioned
13 wouldn't be likely to occur.

14 MS. TAYLOR: Okay. Thank you.
15 I think Mr. Tosi has some additional questions.

16 CROSS-EXAMINATION

17 BY MR. TOSI:

18 Q. Good afternoon, Ed. Thanks for appearing
19 today. I appreciate it.

20 A. Thank you.

21 Q. Ed, do you know anything about the over
22 order premium structure in the Mideast Order?

23 A. There's an organization, Mideast Milk
24 Marketing Agency, that is involved in managing
25 the overall pricing structure. I'm not very

1 close to it. There will be another witness that
2 is much closer to it than I am that can give you
3 better information than I could on it.

4 Q. Okay. Are you familiar at all in a range
5 that it's between X dollars and Y dollars?

6 A. I couldn't give you the exact numbers.

7 Q. Okay. I wanted to ask a little more
8 questions -- I wanted to ask several questions
9 about the transportation credit proposal, your
10 Proposal 9. A lot of it's relied very -- or a
11 lot of the examples, the analysis, if you will,
12 in your prepared testimony uses October 2004.

13 And is it your testimony then that October
14 2004 can be relied upon to be a representative
15 of, for lack of a better description, perhaps in
16 quotes, "normal marketing conditions," as a
17 representative month?

18 A. Yes.

19 Q. Why October of 2004?

20 A. Why October of 2004? It was a month
21 where -- it was a month during the short
22 shipping season. We felt that it was a
23 representative month of the other months in the
24 shipping season, and so we thought that was the
25 best month to take a one month's snapshot to

1 look at the data and make some calculations to
2 present our case.

3 Q. If you had chosen March, for example, of
4 2004, would the result have been significantly
5 different?

6 A. In -- likely that the need to bring milk in
7 as supplemental milk would not have been as
8 great.

9 Q. Okay.

10 A. And so if you're looking at something --
11 you're looking at something like what would be
12 the cost to pool something like this, it, you
13 know, might very well be less, in a month like
14 March where there's more -- generally more milk
15 available and it's easier to get milk from
16 within the area and not as much milk necessarily
17 needed out of area.

18 Q. Okay. I wasn't able to gather from the
19 prepared statement what justification or
20 explanation that you're offering for a
21 transportation credit plan that results in a
22 lowering of the blend price to all the markets'
23 dairy farmers.

24 A. Okay.

25 Q. Lowering the PPD, the blend price?

1 A. Okay. Those that supply the Class I market
2 do so to the benefit of all the producers in the
3 pool because the value of the pool is shared
4 equally through the PPD, through the blend
5 price. The -- there are costs involved in
6 assuring the market gets all the milk that it
7 needs, and those -- those costs are not being
8 borne equally by all the members -- all the
9 producers in the pool. And this is creating an
10 unfair disorderly marketing situation.

11 And that -- this proposal addresses that by
12 creating a system where all the farmers that
13 benefit from the Class I sales also bear a small
14 portion of the costs involved with serving the
15 Class I market. And secondly, again, the Order
16 differentials are -- aren't very steep, they're
17 very narrow in that moving milk across zones,
18 the zone differences aren't great enough to
19 cover costs of moving the milk across zones like
20 they are in -- well, they aren't enough to cover
21 to move the milk across zones, so this then is a
22 remedy for that as well in that those that
23 supply the Class I market can get some of their
24 costs back.

25 Otherwise, it's those that supply the Class

1 I market, their producers end up shouldering a
2 higher hauling burden than others in the market
3 that don't necessarily service that Class I
4 market, but get the benefit of the blend price
5 nonetheless.

6 Q. To the extent that we have independent
7 producers that are supplying -- sending most of
8 their milk supply to Class I outlets and they're
9 not located that far away from the plant, is
10 there any analysis on the impact that the
11 transportation credits would have on these small
12 independent producers?

13 A. The impact --

14 Q. It would lower their blend by a couple of
15 cents perhaps?

16 A. The impact on any producer in the Order
17 would be the same equally. The PPD would be
18 lowered at the same rate. If the -- a safeguard
19 that was built into this proposal was to exclude
20 the first 75 miles that the -- the first 75
21 miles that a load travels. We feel that the
22 producer should have a responsibility for
23 covering that portion of their hauling rate.
24 And so not only do the -- does it -- a producer
25 is 50 miles from the plant, or the load is 50

1 miles from the plant, then they don't get any
2 credit under this. If a load is 150 miles from
3 the plant -- if the load's 50 miles from the
4 plant, the farmer has to pay for the 50 miles.
5 If the load's 150 miles from the plant, the
6 farmer has to pay the 75 miles and then there is
7 a credit for a portion of the other 75 miles.

8 So the costs to a farmer that's 50 miles
9 away or 75 miles away is not similar still.
10 There's still a greater cost for the farmer 75
11 miles away, but, you know, the exclusion is the
12 same whether you're close in or far away.

13 Q. Okay. I appreciate that. So if it's a
14 farmer located more distant, one's located 150
15 versus 50 miles, why are we going to pay the
16 credit to a handler or to the receiving plant if
17 they're the handler? Why aren't we paying it to
18 the dairy farmer?

19 A. The provisions in the other Orders that
20 have transportation -- marketwide service
21 transportation credits have the payments that go
22 to the handler. And in the case of a
23 cooperative, that is farmer money, is ultimately
24 going to get back into having -- reducing the
25 hauling burden that's associated with those

1 deliveries.

2 In a competitive market that will exist,
3 those same revenues then will have to be
4 utilized in the same manner for a proprietary
5 handler who gets any credits as well. So that
6 ultimately, although the money's not going
7 directly back to the producer, it was there to
8 help cover the hauling bill so the producer
9 doesn't have to cover as much out of his or her
10 own pocket.

11 Q. Let me give you a scenario.

12 A. Yeah.

13 Q. Let's say there's a dairy farmer located in
14 the northern reach of Michigan and he ships milk
15 to Cincinnati. That's quite a distance.

16 A. Yes.

17 Q. Who gets the transportation credit?

18 A. It's the receiving plant unless there's
19 been a notification -- unless it was shipped by
20 a cooperative and there's a notification to the
21 Market Administrator that the cooperative should
22 receive payment, then it would be the
23 cooperative that arranged for the shipping.

24 Q. What if it isn't a cooperative?

25 A. Then the -- the payment would go to the

1 plant that receives the milk. If somebody
2 shipped it, then there would be an opportunity
3 for them to use this as a negotiation to cover
4 the cost of the milk. In some cases, that cost
5 is going to be FOB the shipping location anyway
6 so that the buying handler has covered all that
7 cost anyway.

8 Q. That may or may not be the case. We're
9 talking about the principle under which this
10 plan was supposed to operate. What I'm hearing
11 from you is that a producer located in northern
12 Michigan shipping milk to Cincinnati doesn't get
13 the credit even though if it was a co-op they
14 would get the credit, but the dairy farmer
15 wouldn't?

16 A. Okay. Let's use your example.

17 Q. Okay.

18 A. You got a producer in northern Michigan
19 who's being procured by a Class I handler in
20 Cincinnati, and so there is a going market rate
21 for milk in Michigan that is going to be the
22 price in Michigan, probably more like the farm
23 price for that part of Michigan and it's
24 going -- the going price is also going to be a
25 premium that's the going price up there, and

1 there's also going to be a hauling charge that
2 is the going price up there.

3 And if the -- if the handler in Cincinnati
4 thinks that he can -- he can charge the full
5 haul and not have something that compensates the
6 producer so that he is just as well off staying
7 in northern Michigan to a handler in northern
8 Michigan as opposed to coming to Cincinnati,
9 he's not going to get the farmer to supply his
10 milk.

11 So likely what's going to happen is that
12 somehow, somehow that Class I dealer, if he's
13 going to buy that milk, is going to have to
14 cover all the costs to getting that milk down to
15 Cincinnati, so he's going to need that credit to
16 pay for some of that haul.

17 And, again, he's not going to be close to
18 getting 100 percent of getting that cost back.
19 It's going to be -- we've got -- it's -- on
20 average, you know, we're taking what 100 percent
21 of the cost would be and just by taking that
22 75-mile exclusion, that takes -- that's going to
23 limit the payment to an average of about half
24 the milk in the Order, so that's 50 percent of
25 the cost you're going to get back maybe. And

1 then you got only 67 percent that you're going
2 to get, so you're -- you know, your total
3 hauling bill that you're going to have for
4 moving milk to Class I, you're only going to
5 get, you know, \$0.02 or \$0.03 on the -- wait,
6 \$0.20 or \$0.30 on the dollar out of your costs
7 back through this credit at best.

8 Q. Okay. Taking that down a little bit of
9 a -- down on a side street here, in your
10 testimony you're saying that the producers
11 should -- let me read the question to you that I
12 have.

13 What level of producer responsibility for
14 transporting Class I milk to a market is
15 reasonable?

16 A. Well, I guess we've defined it through this
17 proposal that for somebody that delivers Class
18 I, they should pay the first 75 miles and then
19 obviously then a percentage of whatever the cost
20 is beyond that. Because we're not getting --
21 even beyond the 75 miles end up getting dollar
22 for dollar cost recovery. You're going to get
23 67 percent of it.

24 Q. Okay. And in general, what level do
25 producers currently incur?

- 1 A. On hauling?
- 2 Q. Yes.
- 3 A. I should know that, but I don't. We can --
- 4 we can get it and -- back in the record somehow
- 5 later.
- 6 Q. One of the things that you -- well, one of
- 7 the reasons that's in your written statement, as
- 8 I understand it, that -- one of the reasons that
- 9 may justify a transportation credit is that the
- 10 slope of the Class I differentials isn't as
- 11 steep as it used to be prior to reform.
- 12 A. In some areas, yes.
- 13 Q. Okay. Would you say that's true for the
- 14 Mideast Market?
- 15 A. Yeah. In some areas in the Mideast Market,
- 16 yes.
- 17 Q. Okay. And we don't have location
- 18 adjustments in the sense that we used to where
- 19 milk was priced relative to --
- 20 A. Home plate?
- 21 Q. Well, relative to the Class I pricing point
- 22 in the market with location adjustments?
- 23 A. Correct. We've got a national -- we've got
- 24 a national grid.
- 25 Q. Right. Back in those days who paid the

1 value for the location adjustment?

2 A. The purchasing Class I handler.

3 Q. Okay. Why should we change that principle
4 where we're going to ask dairy farmers to pay
5 for the privilege of supplying Class I handlers
6 with the milk that they need? Why aren't we
7 charging the Class I handlers for the service
8 that's being provided for them?

9 A. One of the -- a couple reasons. One of the
10 things is that prior to Federal Order Reform
11 this market was, I think, characterized as a
12 Class I market. There was -- it was an
13 unusual -- it had more than 50 percent Class I
14 utilization in this market.

15 Now, the market, if it gets to 40 percent,
16 is having a good month. Generally it's in the
17 30s. There now is a lot of extra milk that is
18 on the pool, and even if -- even with the
19 adoption of Proposal 2 there's still going to be
20 a lot of extra -- there's a lot of extra milk
21 still on the pool that has turned this Order
22 into more of a manufacturing Order than a Class
23 I Order. And so there are a lot of producers
24 and a lot of milk that's associated with this
25 pool that is not continuously serving the Class

1 I market as it did when it was a 50-plus percent
2 Order.

3 And so we felt that because there was so
4 much extra milk on the pool that wasn't making
5 that contribution to Class I as frequently as it
6 used to, that we thought it would be
7 inappropriate to charge Class I customers, and
8 more appropriate that since all this milk is on
9 the pool now that it be more appropriate that
10 all the producers bear some sort of cost for
11 making sure the Class I market is supplied. So
12 that's one reason.

13 The second reason goes along with that
14 there's -- it's a fairly strong, competitive
15 market. It's becoming easier to move milk
16 between markets. And if you start having
17 add-ons in this Order that don't exist in other
18 Orders, it could create enough of a competitive
19 issue that could create some lost sales for
20 customers -- for handlers in this Order and we
21 didn't want that to happen either.

22 Q. Okay. About the over order premiums, you
23 say there will be another witness that speaks to
24 that issue?

25 A. We'll get that information on the record

1 one way or another.

2 Q. Okay.

3 A. I apologize for not --

4 MR. TOSI: That's all I have.

5 Erica, do you have --

6 MS. TAYLOR: No.

7 MR. TOSI: Thank you. I

8 appreciate it.

9 THE WITNESS: You're welcome.

10 JUDGE DAVENPORT: Other questions of

11 this witness? Mr. Gallagher, I think you may

12 finally --

13 THE WITNESS: No. Mr. Beshore

14 may have --

15 MR. BESHORE: I have redirect.

16 JUDGE DAVENPORT: Very well.

17 REDIRECT EXAMINATION

18 BY MR. BESHORE:

19 Q. First of all, Mr. Gallagher, you were asked

20 repeatedly by -- it was called to your

21 attention, called to everybody's attention

22 repeatedly by Mr. Vetne in particular, that you

23 were presenting testimony instead of Elvin

24 Hollon today.

25 A. That's right.

1 Q. And just so the record is clear about this,
2 that circumstance is because his wife passed
3 away last week?

4 A. Yes, that's correct.

5 Q. And he buried her on Saturday and is with
6 his children this week?

7 A. That's right.

8 Q. Nevertheless, he worked on the phone with
9 you and everybody else in preparing for the
10 hearing every day last week?

11 A. That's correct.

12 Q. Now, you were asked about plants in Order
13 33 --

14 A. Yes.

15 Q. -- and who supplied them or whether DFA had
16 a full supply to various plants.

17 Do you have information now that you can
18 provide with respect to the supply to the
19 distributing plants in Order 33?

20 A. I do.

21 Q. And could you provide information with
22 reference to the exhibit, the four -- the five
23 maps that were provided by the Market
24 Administrator in what, Exhibit 7?

25 A. It's Exhibit 7, Request 8(a) through 8(e).

1 Q. Okay. So let's go to Request 8(a) in
2 Exhibit 7. There's a list of distributing
3 plants there in the Northern Ohio Region.

4 Would you just go down the list and tell us
5 what you -- what you can about the supply list
6 distributing plants?

7 A. Okay. Arps Dairy, DFA or DMS does not have
8 regular supply in Arps Dairy and they have their
9 own producers. Consun Foods, DFA has the full
10 supply to Consun Foods. DFA and DMS are the
11 full suppliers to Oberlin Farms. DMS is -- when
12 I say "DMS," it's DFA or DMS. If I say "DMS,"
13 it's both DFA and DMS. DMS is the full supplier
14 to Reiter Dairy. DFA is a partial supplier to
15 Smith Dairy who has their own farms. DAF is the
16 full supplier to Sterling Milk Company. There
17 is no regular supply to Superior Dairy who has
18 its own producers.

19 Q. When you say "no regular supply," you mean
20 no regular supply by DFA or DMS?

21 A. I'm sorry, by DFA or DMS, yes.

22 Q. Or MMPA or NFO, to the best of your
23 knowledge?

24 A. I don't know about them. It's just DFA and
25 DMS that I have knowledge of.

1 Q. Okay. Now, let's turn then to request
2 8(b). It would be the next page in Exhibit 7
3 and talk about distributing plants in the
4 Southern Ohio Region.

5 A. Broughton Foods has full supply with DMS.
6 DFA has full supply at H. Meyer Dairy. DMS has
7 full supply at Reiter Dairy. DFA has full
8 supply at Tamarack. DFA has full supply at
9 Louis Trauth. There's a partial supply at
10 United Dairy for both the Charleston and Martins
11 Ferry plants and at both of those plants there's
12 also -- United has its own supply, and DFA has
13 full supply at the United Plant in Cincinnati.

14 Q. That's the United Dairy Farmers' plant?

15 A. Yes.

16 Q. Okay. Let's go to Request 8(c) then, the
17 distributing plants in the Michigan Region.

18 A. Okay. DFA has full supply at Bareman. It
19 has no regular supply at Country Fresh. It has
20 a partial supply at Country Fresh. I should
21 have said it has no regular supply at Country
22 Fresh in Flint, and then at Country Fresh in
23 Grand Rapids and Livonia it has partial supply.
24 It has no regular supply at Guernsey Farms
25 Dairy, no regular supply at Inverness Dairy, no

1 regular supply at Jilbert Dairy and Jilbert has
2 its own producers. DMS has the full supply at
3 Liberty Dairy. There is no regular supply at
4 Michigan Dairy. There's no regular supply at
5 Parmalat, there's no regular supply at Prairie
6 Farms in Battle Creek and they have their own
7 producers, and there's a partial supply at
8 Quality Dairy, which also has their own
9 producers.

10 Q. Okay. Let's turn then to the Indiana
11 Region, Request 8(d).

12 A. DFA has a partial supply at Dean Foods, has
13 a partial supply at Eastside Jersey Dairy,
14 partial supply at The Kroger Company in
15 Indianapolis, has no regular supply at Pleasant
16 View Dairy, has a partial supply at Prairie
17 Farms in Ft. Wayne which also has its own
18 producer. DMS has a full supply at Schenkels
19 and there is no regular supply at Smith Dairy
20 which, again, has its own producer supply.

21 Q. Okay. And finally Request 8(e), the
22 Pennsylvania Region of Order 33.

23 A. DFA has no regular supply at Carl
24 Colteryahn, which does have its own producers.
25 DMS has full supply at Dean -- Dean in

1 Sharpsville. It has no supply at Marburger,
2 which has its own producers. DMS has full
3 supply at Meadow Brook. Schneider's and
4 Turner's, DFA does not have any type of regular
5 supply and both of those dairies have their own
6 producers. And it has a partial supply at
7 United Dairy in Uniontown and United Dairy has
8 its own producers.

9 Q. Okay. Now, when you indicated that DMS has
10 a full supply or a partial supply, from what
11 source is -- who is included, what
12 organizations, what producers are included in
13 the DMS supply to those distributing plants?

14 A. Okay. It would be DFA, it would be the DMS
15 independents, so it would be Dairylea, Foremost,
16 NFO, Land O'Lakes, Michigan Milk, Brewster
17 Cheese Producers, Flint Farmers Union Producers,
18 Bear Lake Cooperative Producers, Pearl Valley
19 Cheese Producers, Guggisberg Cheese Producers,
20 Holmes Cheese Producers, Minerva Cheese
21 Producers and Continental Dairy.

22 Q. Okay. Now, let's -- I want to make sure
23 that the record is clear about what this means.

24 Okay. DMS has a full supply to a plant as
25 you've described, okay, but there are how

1 many -- how many different sets of groups or
2 entities that supply through DMS?

3 A. Fifteen.

4 Q. Fifteen?

5 A. One-five, fifteen.

6 Q. Only one of which is DFA?

7 A. Correct.

8 Q. Okay. Now, you indicated in one of those
9 15 groups is a group of independent dairy
10 farmers, it's just independent dairy farmers?

11 A. Yeah. Yes.

12 Q. Okay. Now, you're not talking about the
13 Independent Dairy Farmers Association of which
14 the president testified here?

15 A. No. They are largely producers who market
16 their milk through Dairy Marketing Services who
17 would be known as the -- the common term is Dean
18 Foods independent. They used to be the
19 producers that were pooled directly by Dean
20 Foods.

21 Q. Okay. So when you say "DMS has a full
22 supply," the market is supplied in part by all
23 of those -- do you know how many hundred
24 independent farmers are marketed through DMS in
25 Order 33? Do you have an estimate?

1 A. Yeah, I don't have an estimate. Over a
2 thousand. Also on the DMS it's not just the
3 Dean independents. There are some of the
4 producers who ship to some of the NDH plants
5 that are also shipping through DMS.

6 Q. Okay. Now, what's the next supplier there
7 through DMS? Well, are a number of those other
8 suppliers independent cooperatives not members
9 of DFA, or --

10 A. Yeah. There's Foremost Farms, NFO, Land
11 O'Lakes, Michigan Milk, Continental Dairy --
12 Dairylea's a member of the cooperative DFA, but
13 Dairylea.

14 Q. Okay. And when those organizations supply
15 milk to distributing plants through Order 33
16 during DMS, it qualifies their producers for
17 pooling into the Order?

18 A. Correct.

19 Q. Now, you also mentioned a number of other
20 lesser -- less familiar named organizations.
21 What's the arrangement there? Bear Lake, for
22 instance.

23 A. Bear Lake is a cooperative that it is
24 qualified through the report of DFA/DMS for
25 pooling purposes and milk is made available to

1 Class I plants as needed to help fill the supply
2 at those plants.

3 Q. So when you talk about DMS having a full --
4 having a full supply at these plants, that
5 provides access to the market for Bear Lake
6 Cooperative?

7 A. Correct. Not only, because even those
8 plants I indicated DFA had a full supply, those
9 plants as well.

10 Q. All right. Are plants where these
11 organizations supply milk and therefore qualify
12 for pooling?

13 A. Correct.

14 Q. Okay. Now, when you -- you mentioned a
15 couple of cheese plants on there, I think?

16 A. Yes.

17 Q. Okay. Can you -- what were those names
18 again, Minerva maybe?

19 A. There's Brewster Cheese, Pearl Valley
20 Cheese, Guggisberg Cheese, Holmes Cheese and
21 Minerva Cheese.

22 Q. Those aren't cooperatives?

23 A. I don't believe they are.

24 Q. Okay. So when you say you're providing a
25 market under Order 33 for those plants, does

1 that mean the independent dairy farmers or the
2 dairy farmers who weren't members of DFA that
3 otherwise supply those cheese plants?

4 A. Yes.

5 Q. Okay. And so when the record reflects that
6 DMS has a supply arrangement with a distributing
7 plant, it provides pooling under the market for
8 producers supplying those independent cheese
9 plants as well?

10 A. That's correct.

11 Q. And, of course, plants with which DFA or
12 DMS has no supply relationship whatsoever,
13 somebody else provides and receives all the
14 pooling access by supplying those distributing
15 plants, correct?

16 A. Those and the ones that are partially
17 supplied.

18 Q. And the ones that are partially supplied.
19 Okay. With respect to the sample or the one
20 month being October 2004 with which we had
21 information with respect to the potential cost
22 of transportation credit, is it -- I think you
23 may have noted this in your response to
24 Mr. Tosi, but would it be fair to assume that
25 October is probably a high cost month under the

1 Order for transportation credits if they were in
2 the Order?

3 A. It's got to be, if not the highest, one of
4 the highest. In the top three.

5 Q. And is that simply because of the
6 supply/demand characteristics under the Order?

7 A. Yeah. You've got seasonally declining milk
8 production still and you've got increasing
9 demand and so you've -- you've got a big pool
10 for milk in a lot of markets that are short and
11 so you have to reach farther and deeper out of
12 your normal area to make sure you have enough
13 milk to meet your Class I needs in your market
14 so you're going to have higher costs than you
15 would, say, in March.

16 Q. So in Order 33 and every other Order which
17 you're familiar with the marketing of milk, milk
18 tends to move greater distances in October to
19 meet the Class I needs than, say --

20 A. Absolutely.

21 Q. -- March or April?

22 A. Absolutely. Generally the reverse is
23 happening in March. You're shipping milk long
24 distance to find a balance.

25 Q. For which no transportation credit is

1 available?

2 A. Which there is no transportation credit
3 available. Farmers that are financing that are
4 eating that cost.

5 Q. Now, with respect to the operation of
6 Proposal 9 and who gets the credit, first of
7 all, was the language in terms of who gets that
8 credit picked up from the existing language in
9 Order 30, to the best of your knowledge?

10 A. To the best of my knowledge it was.

11 Q. Okay. And in Order 30 there are assembly
12 credits and transportation credits in that Order
13 as your direct statement -- direct testimony
14 indicated?

15 A. Yes. And the value of that comes out of
16 the pool and lowers the PPD value in that
17 market.

18 Q. Okay. And it's your belief that although
19 the credits would be -- would be credited on the
20 handler or the cooperative's account, that
21 competitive forces in the -- in the country as
22 they say sometimes would -- and dairy farmer
23 knowledge, if nothing else, would indicate that
24 that -- those credits are going to get back to
25 the farm level?

1 A. I firmly believe that those credits will
2 get back to the farm level in the form of lower
3 hauling costs. Yes, it's a little bit different
4 here in the Mideast Order relative to a lot of
5 Orders. The cultural aspect here in this area
6 is that the dairy farmers negotiate with their
7 hauler for the hauling rate, for the cost of
8 hauling milk to the closest plant or for certain
9 assembly functions, and that that is generally
10 what the charge is that is deducted from a
11 farmer's milk check.

12 If milk goes beyond a normal distance,
13 which is the local area, that the cooperative or
14 the handler picks up all that cost, and, you
15 know -- other than the farmer -- you know, if
16 it's a cooperative, the cooperative has less
17 money to pay the farmer if they can't get that
18 cost out of the marketplace.

19 Q. Now, let's talk about the changes in pool
20 calculation dynamics and Market Order dynamics
21 post Federal Order Reform versus pre-Federal
22 Order Reform a little bit in the context of
23 transportation credits.

24 And I think you described in response to
25 Mr. Tosi's questions the fact that the

1 utilization in this Order has changed quite a
2 bit post-Federal Order Reform?

3 A. Correct.

4 Q. And one of the -- one of the elements of
5 pricing in Federal Orders, pre-Federal Order
6 Reform, which we don't have today and which was
7 referred to by Continental's witness earlier, is
8 the fact that distant milk is not reduced in
9 value, zoned out, so to speak, today the way it
10 was pre-Federal Order Reform, correct?

11 A. That's correct. They used to have a zone
12 adjustment that could go pretty much, I think,
13 as far as you wanted it to go to create the
14 upzoning that you bring milk in a long distance
15 and that just doesn't exist anymore.

16 Q. Okay. And one of the dynamics that the --
17 one of the things that meant was if milk at that
18 a long distance away was being pooled on the
19 Order and utilized at its point of production
20 for Class III or IV purposes, the milk would --
21 the pool would gain something in a way from that
22 pooling because its value would be reduced by
23 the distance and that reduction in value would
24 be added back into the pool?

25 A. That's right. The blend price for that

1 would have been reduced by something that
2 probably would be equivalent to some factor of
3 some cents per hundredweight per some 10 miles.
4 I know in the old Mideast Order it averaged
5 something like \$0.03 per hundredweight per 10
6 miles, and I think that was actually written in
7 for beyond 400 miles was 2 and a half cents per
8 hundredweight for 10 miles. So you get zoned
9 out and that blend price gets deleted.

10 In fact, it helped keep a lot of that
11 distant milk to be regularly pooled on the Order
12 because the blend price at the location of 4 or
13 500 miles away was just not high enough relative
14 to the blend price in the Order where the milk
15 actually existed.

16 Q. So the more distant milk was, in essence,
17 charged for the -- a factor for the distance it
18 was from the market, the Class I marketplace?

19 A. Correct.

20 Q. Okay. And because it's not charged now,
21 it's more economically advantageous to pool more
22 distant milk on the Order?

23 A. Yes. And when you do have to bring the
24 milk in to cover a Class I sale, you aren't able
25 to get, you know, the value out of the Order to

1 cover that cost.

2 Q. The value that was reflected by the
3 transportation -- the zone out?

4 A. The difference between the blend of the
5 location of the source of the milk and the blend
6 at the plant.

7 Q. So in that pre-Federal Order Reform, in
8 essence, that Order paid for that milk to be
9 brought in from that distant location if it was
10 because it gave it additional value in the form
11 of the location prices?

12 A. Correct.

13 Q. And that came out of the pool?

14 A. Correct.

15 Q. It went in to or came out. It was part of
16 the pooling process, correct?

17 A. Correct.

18 Q. So if you -- at present time we've got
19 higher no zoned out prices and a reduction in
20 the funds in the amount of reimbursement that
21 comes out of the pooling process when milk is
22 brought from longer distance in for Class I.
23 That's the flattening of the zones that you
24 talked about, correct?

25 A. Yes.

1 Q. Now, isn't it the case, Mr. Gallagher, that
2 the -- the less than \$0.03 charge to the pool in
3 October that's shown in the transportation
4 credit calculation of -- done by the Market
5 Administrator --

6 A. That's right.

7 Q. -- in a high month, what we believe would
8 be a high month for credits, that that less than
9 \$0.03 is much less than the cost of the pool
10 compensated pre-Reform by virtue of the way milk
11 was zone priced at that time?

12 A. I believe it would be. I don't have a
13 calculation to show you, but I believe it would
14 be.

15 Q. Okay. So that, you know, in essence, we're
16 asking producers in the pool to -- who don't
17 supply Class I -- producers who don't supply
18 Class I to absorb much less of a cost than
19 they -- than they did before for sharing in the
20 pool?

21 A. That's right.

22 Q. For sharing in the class of the values of
23 the pool.

24 A. Right.

25 MR. BESHORE: Okay. Now, with

1 respect to the -- or reserving the fact that
2 Mr. Gallagher has indicated that we could obtain
3 from some other witnesses or he would come back
4 with information about hauling costs and about
5 over order prices in the area, I have no further
6 questions for him at this time.

7 JUDGE DAVENPORT: Very well.

8 Recross? Mr. Vetne?

9 MR. VETNE: John Vetne for
10 White Eagle. I have only one page of questions.
11 This time I only have one page of questions.

12 RECCROSS-EXAMINATION

13 BY MR. VETNE:

14 Q. The varied participants that you
15 mentioned that pooled their milk to or through
16 DMS --

17 A. Yes.

18 Q. -- some cheese plants, some fluid plants,
19 some producers who were formally independent
20 patrons of fluid plants, who sets the price for
21 milk marketed by DMS?

22 A. In some instances it is the Mideast Milk
23 Marketing Agency for some of their Class I
24 sales. In other instances it is a negotiation
25 between the Mideast management and the

1 management of the entities that they are
2 negotiating with.

3 Q. By "Mideast management," who are you
4 referring to, DFA Mideast?

5 A. I'm sorry, yes. DFA Mideast.

6 Q. Okay. Let's see. Mideast management being
7 DFA Mideast management. MEMMA being the plants
8 that you have -- are certified MEMMA, and those
9 plants are primarily in Indiana and Ohio?

10 A. Yeah.

11 Q. Maybe a little bit into western
12 Pennsylvania?

13 A. A little bit into western Pennsylvania.

14 Q. Okay. Who else serves as price --

15 A. Yeah. And then the DFA management
16 determines what the DFA members get paid, and --
17 as well as the DMS independents. And even in
18 that element it's -- tends to be in negotiation
19 between the member -- or the producer and the
20 member.

21 Q. DFA management determines what DFA
22 independents get paid, is that it?

23 A. Well, it's the -- it would be the DMS --
24 yeah, DMS shippers, the people that operate DFA
25 and DMS who identify what kind of price they get

1 paid.

2 Q. Okay. With respect to the milk of the --
3 you mentioned a number of cheese plants. With
4 respect to the milk associated with those
5 plants, that does not go to fluid distributing
6 plants, but remains pooled and remains pooled at
7 the nonpooled cheese plants, who sets the price
8 for that milk?

9 A. I got to believe that it's the -- for
10 instance, I'll use Brewster Cheese as an
11 example. I got to believe it's a determination
12 between Brewster Cheese and their individual
13 farmers.

14 Q. And what is the arrangement between
15 Brewster Cheese and DMS as far as
16 compensating for accommodating that milk in the
17 pool?

18 A. Right. I don't know if there is one and I
19 don't know what it is.

20 Q. And since we last talked, do you have any
21 better information on the volume of milk in the
22 pool for which DMS's pool report is responsible?

23 A. No. I don't have any better information
24 for you than the last time you asked. Sorry.

25 MR. VETNE: Thank you.

1 THE WITNESS: You're welcome.

2 JUDGE DAVENPORT: Other recross?

3 Very well, Mr. Gallagher, you may step down.

4 THE WITNESS: Thank you.

5 MR. BESHORE: The next witness is

6 Mr. Rasch of Michigan Milk Producers

7 Association.

8 JUDGE DAVENPORT: Very well. Raise

9 your right hand.

10 (Thereupon, Mr. Rasch was sworn by

11 Judge Davenport.)

12 JUDGE DAVENPORT: Please be seated.

13 CARL RASCH

14 of lawful age, a Witness herein, having been

15 first duly sworn, as hereinafter certified,

16 testified and said as follows:

17 DIRECT EXAMINATION

18 BY MR. VANDERHAAGEN:

19 Q. Mr. Rasch, would you give your full name

20 and spell your last name for the record, please?

21 JUDGE DAVENPORT: Counsel, if you

22 would identify yourself?

23 MR. VANDERHAAGEN: I'm sorry. David

24 Vanderhaagen for Michigan Milk Producers

25 Association.

1 THE WITNESS: Yes. My name is
2 Carl Rasch, and the spelling of that last name
3 is R-a-s-c-h.

4 BY MR. VANDERHAAGEN:

5 Q. And your business address?

6 A. It's 41310 Ridge Street, Novi, Michigan,
7 ZIP code 48376.

8 Q. How are you employed, Mr. Rasch, and for
9 how long have you been so employed?

10 A. I'm employed in the position of the
11 Director of Bulk Milk Sales for the Association.
12 I've held that position since 1977.

13 Q. And prior to then were you employed in the
14 milk industry?

15 A. Yes. Upon graduation from Michigan State
16 University I took a position with the Federal
17 Farm Program in what was then the southern
18 Michigan market and I worked four years there in
19 the capacity as a field auditor and in the
20 monthly compilation of the milk price.

21 Q. And have you previously testified in
22 Federal Order hearings?

23 A. Yes, I have.

24 Q. Mr. Rasch, you heard that in the testimony
25 of Mr. Gallagher he referred in two different

1 places for -- that you would be testifying about
2 various items.

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

4 Q. One was for a modification of the
5 transportation credit for transportation that
6 would take place entirely within Michigan. That
7 had to do with Proposal Number 9. And the
8 second was a modification to the pool
9 performance standard that Michigan Milk
10 Producers Association would be offering with
11 respect to Proposal 2. Is that correct?

12 A. That's correct.

13 Q. I would invite you then to present your
14 testimony on both of those issues.

15 A. Okay.

16 (Thereupon, Exhibits 27, 27-A and
17 27-A-1 of the Mideast Federal Milk
18 Marketing Order hearing were marked
19 for purposes of identification.)

20 JUDGE DAVENPORT: If you would,
21 Mr. Rasch, I've marked your statement in support
22 of Proposal 2 -- or the modification of Proposal
23 2 as 27, and your statement in support of
24 Proposal Number 9 as 27-A so if you would,
25 please take up Proposal 2 first.

1 THE WITNESS: Okay. My name is
2 Carl Rasch. I'm employed by the Michigan Milk
3 Producers Association as its Director of Bulk
4 Milk Sales. I'm here to testify on behalf of
5 MMPA. MMPA is a member owned Capper Volstead
6 cooperative actively engaged in marketing milk
7 in the Mideast Federal Order.

8 MMPA agrees that current performance
9 standards are too lax and need to be adjusted.
10 We are a proponent of Proposal 2 and are
11 requesting that USDA consider a modification of
12 the proposal that appears in the hearing notice.
13 Specifically, MMPA requests that the performance
14 requirement for a cooperative association per
15 Section 7(d), "d" as in dog, be increased from
16 30 percent to 35 percent for the month of August
17 and to 40 percent for the other months of
18 September through November. MMPA believes that
19 an intermediate performance standard of 35
20 percent that would only apply -- that would
21 apply only to the month of August is
22 appropriate.

23 Although the current performance
24 standard requires the cooperative association
25 deliver only 30 percent of the producer milk of

1 its members to distributing plants during the
2 current month or 30 percent of its aggregate
3 supply during the preceding 12 months, MMPA has
4 performed at levels greater than this prescribed
5 minimum for the past two years. MMPA has
6 performed at a level that has ranged from 35
7 percent to 41 percent during the peak fluid
8 demands months of August through November.
9 These percentages that I have listed have been
10 adjusted to include any volume of producer milk
11 that may have been depooled during these four
12 months of those past two years.

13 In both of the past two years, August
14 has been MMPA's lowest performance month. This
15 can be attributed to a number of factors.
16 First, more than 90 percent of MMPA's producer
17 milk originates from member farms located in
18 Michigan. Because of our concentration of milk
19 supply, most of our long-term supply
20 arrangements are with Michigan processors. The
21 percent of Michigan's milk production that is
22 utilized for Class I purposes is less than most
23 of the other milksheds in the Mideast Order.
24 And this has been demonstrated in several
25 exhibits -- or several documents that are part

1 of Exhibit 7, specifically the DFA request to
2 the Market Administrator that were number 8 and
3 the ones that related to the northern Ohio
4 region and the Michigan region. The combined
5 Class I sales volume for Michigan distributing
6 plants as -- expressed as a percentage of the
7 Michigan pool producer milk during the month of
8 October of 2004 was only 36 percent. Typically,
9 October Class I utilization is greater than
10 August. Typically, it's one of the highest
11 months of the year. Of the other four milkshed
12 regions, only the northern Ohio region displayed
13 a lower percentage. Its percentage was 31
14 percent primarily due to an absence of
15 distributing plants in northwest Ohio.

16 The fluid milk processing industry in
17 Michigan has experienced a great deal of
18 consolidation in recent years. As a result,
19 access to fluid sales for qualification purposes
20 is becoming more limited. Access is also
21 limited due to supply relationships that have a
22 lot of history behind them. An analysis of the
23 supply relationship for the 12 distributing
24 plants that were located in Michigan during
25 October of 2004 will illustrate this. Four of

1 those plants are owned by Dean Foods, which has
2 a national supply agreement with DFA.
3 Consequently, MMPA serves as a supplemental
4 supplier at three of these facilities. The
5 other -- the fourth one we're predominantly the
6 exclusive supplier.

7 Four other plants have their own
8 patron supplies, so MMPA, again, acts as a
9 supplemental supplier for three of these plants.
10 And of the remaining four plants, two have
11 exclusive supply arrangements with DFA and the
12 other two are supplied exclusively by MMPA.

13 Because of MMPA's role as a market
14 balancer, most of the supplemental needs of the
15 processors for whom MMPA balances don't fully
16 materialize until after schools have reopened.
17 And typically schools reopen in Michigan after
18 Labor Day. This is reflected in MMPA's higher
19 performance percentages for the months of
20 September and October. A review of the Market
21 Administrator's compilation of statistical data
22 will confirm that the amount of Class I
23 utilization in Federal Order 33 was greater in
24 both of the months of September and October than
25 it was in October of 2003 and October of 2004.

1 JUDGE DAVENPORT: Your statement
2 reads "August."

3 THE WITNESS: I'm sorry. August
4 of 2003 and August of 2004. And in each of the
5 past four years, Federal Order 33 Class I sales
6 in October exceeded those -- those reported in
7 August.

8 In order to increase MMPA's
9 performance level in August, several options
10 exist. MMPA could attempt to change current
11 supplier arrangements in order to deliver more
12 milk to distributing plants. This would likely
13 displace other milk and be met with resistance.
14 MMPA could attempt to enter into some type of
15 milk exchange with other market participants.
16 This possibly could work in other months, but
17 for August would most likely result in
18 inefficient movement of milk simply to satisfy
19 qualification requirements.

20 MMPA could also attempt to expand our
21 sales area beyond Michigan and pursue new fluid
22 outlets for our producer milk on a permanent
23 basis. Because MMPA's milk supply is not
24 located in close proximity to most of these
25 alternative outlets, this would not necessarily

1 be an economically viable option. Therefore,
2 MMPA has elected to execute seasonal
3 supplemental agreements with the major supply
4 cooperative in Ohio and Indiana and markets
5 further south. Those agreements typically
6 commence on August 1 and end sometime in
7 November. The supply agreements usually contain
8 a cancellation provision which allows the
9 purchasing cooperative to draw on the
10 supplemental supply after other available
11 supplies are first fully utilized.

12 Previous testimony in this statement
13 indicated that the northern Ohio area was also a
14 reserve supply region for the Mideast Market.
15 Exhibit Number 14 demonstrated that the mileage
16 from this region to designated deficit markets
17 within the Mideast Order are considerably less
18 than from central Michigan. For example, it's
19 86 miles to Newark, Ohio and 200 miles to
20 Newport, Kentucky from northern Ohio versus 317
21 miles to Newark, Ohio and 365 miles to Newport,
22 Kentucky from central Michigan. Differences in
23 miles to the market will translate directly to
24 differences in hauling costs making the northern
25 Ohio region a preferred supplier -- preferred

1 reserve supply versus central Michigan. The
2 ability of the purchasing cooperative to cancel
3 supplemental loads has also resulted in more
4 cancellations during August versus other months
5 during each of the past two years which again
6 makes it harder to comply with the 40 percent
7 performance standard during the month of August.

8 MPPA does not currently have, nor has
9 it previously had, any arrangement to qualify
10 producer milk for other entities from outside of
11 or within the Federal Order 33 marketing area.
12 MPPA does not condone selling qualification
13 privileges. Our request for a 35 percent
14 performance standard for the month of August is
15 not intended to assist MPPA in qualifying
16 producer milk for anyone but our own members.

17 In conclusion, MPPA recognizes the
18 need to increase performance standards in order
19 to assure that the Class I needs of the market
20 are adequately and equitably serviced and to
21 assure that the proceeds from the Class I market
22 are shared among the appropriate producers. A
23 40 percent performance standard for the months
24 of September through November is reasonable, but
25 we believe the 35 percent performance standard

1 is a more reasonable standard for the month of
2 August. The proposed higher performance
3 standards will require more shipments from MMPA
4 in each of these four months in order to assure
5 an adequate margin -- to assure an adequate
6 margin of error because of the hard limit of
7 either 35 percent or 40 percent versus the
8 current 12 because of the -- sorry. Let me back
9 up. The proposed higher performance standards
10 will require more shipments from MMPA in each of
11 these four months in order to assure an adequate
12 margin of error because of the hard limit of
13 either a 35 or 40 percent standard versus the
14 current 12 month rolling average position. MMPA
15 is more than willing to comply with the higher
16 performance standard provided there is
17 cooperation from other market participants to
18 assure access to the necessary level of
19 deliveries without any charges for the
20 qualification privilege.

21 In regards to the performance level
22 for the month of August, if market conditions
23 warrant a higher degree of performance, the
24 Market Administrator does have the discretionary
25 authority to increase the shipping percentage.

1 MMPA is confident that the Market Administrator
2 is capable of reacting to changing market
3 conditions in a timely manner and can make the
4 appropriate adjustment. That's the conclusion
5 of that statement.

6 BY MR. VANDERHAAGEN:

7 Q. Why don't you go ahead, Mr. Rasch, and
8 present your second statement and you can be
9 crossed on either one.

10 A. Well, as mentioned earlier, I am the
11 witness that was going to propose testimony in
12 regards to a modified transportation credit for
13 Michigan. And the purpose of doing that is to
14 produce another level of safeguard to assure
15 that -- that the impact on the PPD necessary to
16 move milk around within the market to get it
17 where it's needed is minimized.

18 And I've already introduced myself, so I'll
19 just skip right into the testimony here. I'm
20 here to testify on behalf of the Proponents of
21 Proposal 9 in regards to a modification of the
22 transportation credit that would be applicable
23 to milk delivered from Michigan farms to
24 Michigan plants. Such a modification is
25 necessary to account for the larger sized

1 trailers that are used to haul milk in Michigan.
2 Michigan roads and bridges are constructed
3 to allow for significantly higher --
4 significantly heavier truck weights than other
5 midwestern states. The limiting factor to
6 hauling milk in Michigan is the number of axles
7 that the weight is distributed across, not the
8 gross weight of the truck and payload. Over
9 time, the average size of farm pick up trailers
10 has increased dramatically in order to take
11 advantages of the economies of scale allowed by
12 Michigan weight restrictions. As haulers
13 replace equipment, 10,500 gallon trailers have
14 become much more common. Although operating
15 costs per mile for these larger trailers are
16 greater, the additional payload allowed is large
17 enough to offset these costs and result in lower
18 hauling costs per hundredweight. The
19 economies -- these economies are depicted in
20 Exhibit Number -- which we haven't identified
21 yet, which is an attachment to the schedule and
22 are the basis of the modified transportation
23 credit as proposed for Michigan.
24 Operating costs per mile for these larger
25 units average \$3.12 per mile or approximately 40

1 percent greater than the costs which were
2 previously quoted for a 48,000 pound load.
3 Operating costs are higher due to more fuel
4 consumption, greater capital investment,
5 additional insurance cost for equipment and
6 cargo and additional maintenance expense relate
7 to an increase in the number of axles, tires and
8 brakes. Typically, these larger units travel
9 fewer miles per day because their operation is
10 confined within Michigan and that also
11 contributes to a higher cost per mile for fixed
12 expenses such as licenses, insurance, wages and
13 fringe benefits.

14 A 10,500 gallon trailer is capable of
15 hauling 90,000 pounds of milk, but because these
16 trailers are assembling milk from multiple farms
17 of various volumes, a 86,400 pound payload is
18 more representative and was used to calculate
19 the credit rate for Michigan. Dividing the
20 operating costs per mile of \$3.12 by a payload
21 of 86,400 pounds results in a transportation
22 credit rate of \$.0036 per hundredweight per mile
23 in order to achieve full recovery of the hauling
24 cost. To be consistent with earlier testimony
25 by Mr. Gallagher, we are proposing that the

1 credit rate be reduced by 33 percent which then
2 results in an adjusted credit rate of \$.0024 per
3 hundredweight per mile. This specific rate
4 would apply only to milk delivered from Michigan
5 farms to plants located within Michigan.

6 And then attached is an exhibit identified
7 as Modified Michigan Transportation Credit, and
8 it simply illustrates the calculation of the
9 rate per hundredweight per mile as presented by
10 the DFA witness and the modification that I have
11 just proposed. That concludes my statement.

12 JUDGE DAVENPORT: Any objections to
13 the statements themselves? They will be
14 admitted into evidence as Exhibits 27 for the
15 statement in support of Proposal 2 and 27-A in
16 support of Proposal 9 and 27-A-1 will be the
17 exhibit itself. Cross?

18 CROSS-EXAMINATION

19 BY MR. VETNE:

20 Q. Good afternoon, Carl.

21 A. How are you doing, John.

22 Q. I'm John Vetne and I still represent White
23 Eagle. In your testimony on Proposal 2 which
24 I'm going to focus on you discussed access to
25 plants and some supplied by DFA, some having

1 partial supplies by MMPA.

2 An earlier witness identified the plants
3 that were supplied in full by DFA. Do you have
4 Exhibit -- or Table 8C handy? Can you identify
5 those plants that are supplied in full by MMPA?

6 A. Yeah, I have it.

7 Q. It's either Exhibit 7 or Exhibit 11.

8 A. Yes. The plants that MMPA exclusively
9 supplies would be the Country Fresh plant at
10 Flint, the Kroger plant in Livonia which is
11 identified as Michigan -- Michigan Dairy, LLC,
12 and Parmalat in Grand Rapids.

13 Q. Okay. Is -- are there any plans in
14 connection with Parmalat bankruptcy to either
15 continue or not continue operating that plant?

16 A. They continue to seek a buyer for the
17 operation, but beyond that a lot will depend on
18 whether a sale is consummated and who the
19 purchaser is and what their plans are to do with
20 the operation. It is -- it's a rather unique
21 facility. It's aseptic. They package an
22 aseptic product there.

23 Q. UHT?

24 A. Yes.

25 Q. Yes. Which is milk that can be stored on

1 the shelf at room temperature, correct?

2 A. Yes.

3 Q. And which has not only a national market,
4 but a worldwide market?

5 A. Worldwide market, yes. Correct.

6 Q. Can you tell me the approximate average or
7 particular monthly volume of those plants
8 received by those plants?

9 A. Oh, they would -- they're typical plants.
10 They will run between 6 million pounds of milk
11 and 30 million pounds of milk.

12 Q. Is Parmalat the smaller of the three?

13 A. I guess I'll let you draw your own
14 conclusion.

15 Q. All right. Will you give me information on
16 the aggregate supply to fluid plant of milk of
17 MPPA origin per month?

18 A. I didn't quite understand the question.
19 Would you repeat it, please?

20 Q. Combining your full supply to those three
21 plants and your partial supply to other plants,
22 what volume in total on average per month is
23 MPPA's supply to the total plants?

24 A. It will probably range -- if we deal just
25 directly with distribution within Michigan

1 excluding supplemental agreements, it will
2 probably range between 80 million and a hundred
3 million gallons of milk a month.

4 Q. Thank you. And we previously observed that
5 there are two what's called 7(e) plants, the
6 Leprino plants that were pool plants through
7 March and have no longer been pool plants since.

8 Are there any plans on which you are aware
9 to cause those plants to again become qualified
10 as pool plants?

11 A. No.

12 Q. So the only pool plants on the market that
13 are primarily manufacturing facilities are the
14 two MMPA plants at Ovid and Constantine?

15 A. In Michigan?

16 Q. In Michigan, yes.

17 A. Yes.

18 Q. 7(d) plants?

19 A. Yes.

20 Q. And it's only the 7(d) aspect of the
21 Proposal Number 2 that you would like to modify?

22 A. That's correct.

23 Q. Okay. You're not proposing to modify the
24 aggregate diversion limit proposed for Section
25 13 of the plan?

1 A. No.

2 Q. There's a -- a bit of lack of symmetry
3 between your proposal for 35 percent performance
4 in August for 7(d) plants, cooperative plants,
5 and the percentage that would be required to be
6 delivered to pool plants under Section 13 of the
7 proposal.

8 How do you expect to live with that
9 asymmetry?

10 A. Well, what's being proposed is a
11 restriction of diversions to nonpool plants to
12 50 percent for the month of August.

13 Q. Yes.

14 A. And you're really not going to have
15 symmetry. You're going to have a 40 percent
16 shipping requirement from a supply plant and a
17 50 percent diversion limit, so I guess I don't
18 follow the line of questioning why 35 -- 35 --
19 why 40 percent is any -- establishes any more
20 symmetry than 35 percent does.

21 Q. Well, maybe less. But if the
22 performance -- if the performance under Section
23 13 is 50 percent shipments, how is it that you
24 believe you can live with 35 percent performance
25 under Section 17?

1 A. Well, obviously 7(d) plants. You just
2 identified two of our plants as being 7(d)
3 plants. Those are pool plants. Those are not
4 diversions.

5 Q. Oh, yeah. Those don't count against your
6 diversions?

7 A. They're pool plants.

8 Q. So diversions would be Leprino and other
9 customers?

10 A. That's correct.

11 Q. Does MMPA have a supply agreement with
12 Leprino Feeds?

13 A. Yes, we do.

14 Q. Is it a multiyear duration?

15 A. Yes.

16 Q. Does MMPA balance its supply commitment to
17 Leprino at its plants in Ovid and Constantine?

18 A. I guess you need to elaborate a little
19 more. I don't understand the question.

20 Q. The question is whether your supply
21 commitments to Leprino require you to withdraw
22 milk from Ovid and Constantine, for example,
23 during the fall months to make sure that Leprino
24 gets the milk it's contracted for?

25 A. There are seasonal adjustments built into

1 Leprino supply schedule. They -- their
2 production operates counter cyclical to the
3 fluid demand of the marketplace. They receive
4 less milk in the fall months than they do in the
5 spring surplus months.

6 Q. And the two Leprino plants are primarily
7 mozzarella plants?

8 A. Yes, exclusively mozzarella.

9 Q. Exclusively. And they manufacture for a
10 commercial market for mozzarella bulk buyers
11 rather than packaged products in the store; is
12 that correct?

13 A. I'm not aware of Leprino having a branded
14 product or a private labeled product in the
15 store. That's correct.

16 Q. Okay. You are aware that in the -- their
17 primary business is like your pizza
18 manufacturers and other food processors?

19 A. Yes.

20 MR. VETNE: That's all the
21 questions I have. Thank you.

22 JUDGE DAVENPORT: Very well.
23 Additional cross? Mr. Ricciardi?

24 MR. RICCIARDI: Al Ricciardi for
25 Sarah Farms.

1 CROSS-EXAMINATION

2 BY MR. RICCIARDI:

3 Q. Good afternoon, Mr. Rasch. I have a couple
4 of questions based upon, I believe it's Exhibit
5 27. It's your statement that is related to
6 proposed modification to the Proposal Number 2.
7 And specifically on page 3, last paragraph, you
8 indicate that there has been some consolidation
9 in the fluid milk processing industry in
10 Michigan.

11 Can you be more specific, please?

12 A. Plant closings -- well, first of all, plant
13 acquisitions and as a result of new ownership
14 consolidation of that business into other
15 existing plants, and so there's just fewer
16 plants operating today; essentially processing
17 the same amount of milk, but quite a -- quite a
18 bit fewer of those facilities actually existing
19 in Michigan.

20 Q. When you're talking about acquisitions, who
21 have been the principle acquirers of plants?

22 A. Well, in past years it would have been
23 Suiza and Dean Foods primarily, which are now
24 the same company.

25 Q. Okay.

1 A. But they individually made acquisitions.

2 Q. So in terms of defining the consolidation
3 in recent years and fluid milk processing in
4 Michigan, the principle acquirer has been the
5 consolidated now Dean Foods, correct?

6 A. Correct.

7 Q. Now, let me ask you the next question. You
8 state that --

9 A. I want to correct -- Prairie Farms has
10 acquired one facility in Michigan also in recent
11 times.

12 Q. Fair enough. I appreciate that. You
13 indicate on the same page of your statement a
14 few sentences down that of the 12 distributing
15 plants which are outlined on Exhibit Number 7,
16 Request Number 8(c), that 4 of those plants are
17 owned by Dean Foods and that Dean's has a
18 national supply agreement with DFA for those
19 plants.

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

21 Q. Am I correct?

22 A. Correct.

23 Q. Tell -- can you identify for us, please,
24 and for the record, the four plants that are
25 owned by Dean Foods with the national supply

1 agreement with DFA?

2 A. Well, the four plants that are owned by
3 Dean Foods would be Country Fresh, Flint,
4 Country Fresh, Grand Rapids, Country Fresh,
5 Livonia and Liberty Dairy, Ewart, Michigan. And
6 I would -- like I said, they have a national
7 supply arrangement -- or agreement with the Dean
8 Food Company that has not precluded us from
9 supplying milk to those facilities, but it does
10 have -- obviously, you know, they are the
11 preferred supplier.

12 Q. And you anticipated my next series of
13 questions, a question which is: Does MMPA have
14 any type of an agreement to supply milk to
15 Dean's at any of the four plants?

16 A. We had a supply agreement with -- with the
17 original Country Fresh plants that's still --
18 that still is being -- is still recognized by
19 the Dean Foods Company.

20 Q. Does that recognition include actual supply
21 of milk, say, in the last several months?

22 A. We have continuously supplied milk to
23 various Dean plants.

24 Q. And can you tell us for the four plants
25 that are located -- and that you have identified

1 in 8(c) that are owned by Deans, how much in the
2 way of volume MMPA has provided to Dean's in the
3 last several months?

4 A. Aggregate volume?

5 Q. Aggregate volume will be fine.

6 A. Probably 45 to 50 million pounds of milk a
7 month.

8 Q. And is that divided fairly equally among
9 the four plants?

10 A. No.

11 MR. RICCIARDI: Nothing further.

12 Thank you.

13 JUDGE DAVENPORT: Other cross?

14 Mr. Beshore?

15 CROSS-EXAMINATION

16 BY MR. BESHORE:

17 Q. Carl, you -- just to clarify or to go
18 through a couple of things, Michigan Dairy is a
19 Kroger plant; is that right?

20 A. That's correct.

21 Q. And that's a plant that MMPA has the entire
22 supply?

23 A. We supply them exclusively, yes.

24 Q. Okay. And was -- the Country Fresh plant
25 in Flint, did I understand that MMPA supplies

1 that -- that one of the four Dean's plants, you
2 supply all the milk to that plant?

3 A. That was our past arrangement and that's
4 the way it's continued, yes.

5 Q. Okay. And some milk to the other Dean's
6 plants?

7 A. That's correct.

8 Q. Okay. Now, Mr. Gallagher was asked about
9 over order pricing and -- in Order 33, and he
10 said there was another witness that was
11 available to talk about that.

12 Do you -- are you involved with over order
13 premiums in a portion of Order 33?

14 A. The portion that relates specifically to
15 Michigan.

16 Q. And is there an agency in -- in Order 33 in
17 Michigan? I think it's been referred to
18 earlier, but is there an agency that
19 establishes, coordinates over order pricing
20 it --

21 A. Yes. We have a common marketing agency.

22 Q. Okay. And the name of that is?

23 A. The Producers Equalization Committee.

24 Q. Okay. I mean, can you just generally
25 describe the operation of the PEC in its portion

1 of Order 33?

2 A. Well, its principle objective is to
3 establish over order pricing, get as much
4 participation of the -- of the Class I and Class
5 II market sales into this pool and then design a
6 methodology then to pull and distribute those
7 proceeds back to the supplying organizations.

8 Q. Who are the participating supplying
9 organizations in the PEC?

10 A. Formal members that have marketing
11 agreements with the agency would be Michigan
12 Milk Producers, DFA, NFO and Foremost. And then
13 we have some voluntary participants in the pool,
14 which would be DMS, as well as -- a number of
15 the DMS, and Prairie Farms and then a couple of
16 the proprietary distributing plants that have
17 their own patron supply.

18 Q. So -- and just as a general description,
19 PEC operates to announce over order prices for
20 Class I and Class II milk, I assume?

21 A. Yes.

22 Q. Okay. And charges those prices to the
23 buyers of the members who are supplying them?

24 A. Yes.

25 Q. And then distributes the proceeds to the

1 participant's members and non-members alike?

2 A. Yes.

3 Q. Are the price levels established with
4 reference to the going rates of the competitive
5 rates in adjoining geographic areas?

6 A. Obviously over order prices in our markets
7 influence our price level.

8 Q. Right. I mean, you can only charge, yeah,
9 so much. You want to max -- first of all, in
10 charging an overall price, you want to maximize
11 the return to the farmers who are participating
12 in the agency, of course?

13 A. Correct.

14 Q. Again, but you can only charge so much and
15 they've got to be in line with adjoining markets
16 or your customers will lose sales, correct?

17 A. They are within reasonable alignment.

18 Q. Okay. And they would be within reasonable
19 alignment with the other agency in Order 33
20 which is MEMMA to the south of Michigan?

21 A. That's correct.

22 Q. Okay. Are 7(d) plants, you were asked
23 about, you proposed a modification to the
24 position that Mr. Gallagher presented on behalf
25 of four organizations, the modification for 7(d)

1 performance in August. Is it -- and Mr. Vetne
2 asked you, well, that's sort of just for 7(d)
3 and not for other milk or for diversion
4 requirements or whatever.

5 Is it fair to say that 7(d) plants in Order
6 33, you know, are balancing plants for the
7 market?

8 A. That's correct.

9 Q. Okay. And in your knowledge and
10 experience, do the receipts and shipments from
11 those plants vary in a great degree from spring
12 to fall, summer to winter than the other
13 plants -- commercial manufacturers of milk in
14 the Order?

15 A. There's a lot of volatility in -- more
16 volatility involving our 7(d) plants.

17 Q. And your 7(d) plants are, in essence, the
18 plants of last resort for your milk supply?

19 A. That's correct.

20 Q. The last milk goes in there and the first
21 milk goes out; is that --

22 A. That's correct.

23 Q. Okay.

24 MR. BESHORE: May I have just a
25 moment, Your Honor?

1 JUDGE DAVENPORT: Certainly.

2 MR. BESHORE: Thank you. I have
3 no other questions for Mr. Rasch. Thank you,
4 Carl.

5 JUDGE DAVENPORT: Very well. Other
6 cross?

7 FURTHER CROSS-EXAMINATION

8 BY MR. VETNE:

9 Q. I just have one question, Mr. Rasch. With
10 respect to your description of the functions
11 in -- volatility of the plant in Constantine and
12 Ovid, and you were asked if that's generally the
13 function of balancing plants in this market. Do
14 you know whether a similar function and similar
15 volatility is experienced by a DFA plant in
16 Pennsylvania that withdrew from the pool as a
17 7(d) plant last spring?

18 A. I have no firsthand knowledge of the
19 operation of that facility.

20 Q. Okay.

21 MR. VETNE: That's it. Thank
22 you.

23 JUDGE DAVENPORT: Mr. Tosi?

24 CROSS-EXAMINATION

25 BY MR. TOSI:

1 Q. Thank you, Carl, for appearing today.

2 Thank you for your testimony. I was completely
3 unaware of the big difference in the size of a
4 trailer in Michigan versus Ohio, for example.

5 If a load of Michigan Milk were coming down
6 from -- were coming to Ohio to a Class I plant,
7 for example, can you enter Ohio in a
8 90,000-pound tanker?

9 A. No, you can't.

10 Q. You have to split the load then?

11 A. No. You would have to abide by the weight
12 restrictions that apply to either Ohio or
13 Indiana, which is going to be a gross payload of
14 80,000 pounds, I believe. And by the time you
15 factor in the weight of this larger piece of
16 equipment, you would have a -- you would have a
17 teaspoon full of milk in a large trailer.

18 So it wouldn't be -- you can haul milk into
19 Michigan, but it wouldn't be economically
20 feasible. I should say you could haul milk from
21 Michigan into Ohio and Indiana, but it's going
22 to be a drastically reduced payload.

23 Q. Okay. And in that regard with respect to
24 your modification, are you proposing that just
25 on how transportation credits would work within

1 the State of Michigan?

2 A. That's correct. Because if we used the
3 other rate within Michigan, your rate of
4 recovery would be -- would represent a much
5 larger percent of your actual cost if you didn't
6 make that type of a modification.

7 Q. Okay. And does Michigan Milk currently in
8 any way regularly supply plants in the southern
9 part of the marketing area or Federal Order 33?

10 A. Just on a seasonal basis.

11 Q. On a seasonal basis?

12 A. That's correct.

13 Q. Okay. Would you be willing to expand a
14 little bit more about the PEC's over order
15 premium structure, what's a typical over order
16 premium?

17 A. Yes.

18 Q. Either currently or last year?

19 A. Our over order premium, when you combine
20 both the premium and the service charges
21 collected, have ranged from a \$1.40 as a minimum
22 to as much as \$1.65 as a maximum. So you got a
23 \$0.25 spread on Class I.

24 Out of that charge, the handlers are
25 provided some credit incentives in the way of

1 receiving credits to uniformly spread their
2 orders out over the course of the week, so they
3 have the potential to get as much as \$0.25
4 credit back out of that, but -- but the gross
5 before you issue back any credits on Class I has
6 ranged from \$1.40 to \$1.65 over the past two
7 years, so it's a fairly narrow range.

8 Q. So you're, in effect, rebating some of the
9 over order charge that you charge the customer?

10 A. Based on performance by the customer. If
11 they can level out their receipts during the
12 course of the week, we provide them some
13 economic incentive to invest in raw milk storage
14 and do a better job of applying their
15 requirements.

16 Q. Okay.

17 A. In a Class II, it probably runs about --
18 the Class II premium and service charge is
19 approximately \$0.30 less than that what I quoted
20 for Class I.

21 Q. Okay. When you charge -- where PEC is able
22 to negotiate an over order premium, within that
23 is any of that reflective of the additional cost
24 that it takes to move milk from where it's
25 produced to where it's needed?

1 A. We do equalize our prices, our delivered
2 price to the customer. And to the extent the
3 supply organizations within the PEC experience
4 different costs related in servicing the market,
5 primarily transportation costs, because maybe
6 they have to move their milk further to get to
7 the customer than somebody else does, we do have
8 a -- a credit program that operates within the
9 pool to equalize those transportation credits
10 before we make our distribution.

11 As I said, we collect the money, pool it
12 and then essentially equalize it amongst the
13 members. There is some individual distribution
14 back to members to reflect some of their
15 transportation costs, so we do have a haul-in
16 credit operating within the PEC that is
17 available to the supply organizations.

18 Q. Are you familiar at all with the Upper
19 Midwest transportation credit provision?

20 A. Through the Federal Order?

21 Q. Yes.

22 A. Other than I know there is one, but how it
23 operates, no, not really.

24 Q. Okay. Do you think it's a good idea for
25 the Mideast Order that producers are going to

1 charge producers for the delivery of milk?

2 A. Well, the entire market shares in the
3 proceeds from the Class I, from the value from
4 the Class I sale. And I think the data here
5 reflects the fact that where the milk is
6 produced it's not necessarily where it's
7 utilized at. And if you're going to share in
8 the benefits of the Class I market, then I think
9 the cost of supplying the Class I market
10 needs -- needs to be shared amongst all of
11 the -- all of the producers that are part of
12 this pool.

13 Q. And how far do we go then? How far are we
14 going to put the burden then back on the
15 producers to continue to pay for the privilege
16 of supplying milk to Class I handlers?

17 A. Well, I think we try to introduce
18 safeguards in our proposals to minimize the
19 impact on the PPD. You have to limit how far
20 we're going to go. I think the example that
21 Mr. Gallagher, in his statement the numbers that
22 he submitted would indicate that that credit was
23 about \$0.02 per hundredweight and that did not
24 take into account the mitigating factor that we
25 are introducing by proposing a lower credit in

1 Michigan.

2 So I'm going to say when you introduce the
3 credit rate for Michigan, now you're talking
4 about an impact of no more than \$0.02 per
5 hundredweight, and probably the month that
6 you're going to incur the greatest amount of
7 expense. I'm going to say the impact on the PPD
8 is going to range between a penny and \$0.02 a
9 hundredweight.

10 And, you know, I guess we figure that
11 that's the investment that the supplier of the
12 raw -- raw product is going to be obligated to.
13 Obviously, as transportation costs in the future
14 change, we'll have to revisit that issue.

15 Q. And with respect to who receives the
16 credit, are you in agreement that it's a good
17 idea that -- I want to get the terminology
18 right, but please be patient with me.

19 The transportation credit would be paid to
20 the operator of the pool distributing plant or
21 qualified cooperative who's the responsible
22 party for delivering milk?

23 A. Yes, I completely agree with that.

24 Q. Okay. So if a producer in northern
25 Michigan -- I'm going to do the same example.

1 Did you hear my questions of Mr. Gallagher?

2 A. Yes, I was here.

3 Q. Okay. A producer in northern Michigan
4 delivering milk to Cincinnati, when he's
5 delivering his own milk to a plant in Cincinnati
6 under the proposal, as I understand it, the
7 distributing plant in Cincinnati would get the
8 transportation credit even though it was the
9 producer that brought his milk to Cincinnati.

10 A. Well, from a practical standpoint, that
11 producer is not going to deliver the milk to
12 Cincinnati unless the buyer pays the additional
13 transportation cost to get it there versus his
14 alternative market. The buyer paid the
15 transportation cost, the buyer's the one that
16 should receive the credit.

17 Q. So my question then is that why then aren't
18 we charging handlers for the additional
19 transportation costs? The people who are
20 receiving the benefit of having the milk
21 supplied to them?

22 A. Well, I think the example you used is
23 probably not very typical. Milk from northern
24 Michigan is not going to go to Cincinnati.
25 You're assuming the fact, too, that Federal

1 Orders are establishing the entire value for
2 that milk. We are operating in a situation --
3 with super pools and the handler is paying an
4 over order premium to get that milk -- on all of
5 their milk to get a supply delivered to their
6 door, whether it's milk that comes from within
7 50 miles of their plant or 300 miles of their
8 plant.

9 Q. But if the Class I handler needs that milk,
10 doesn't he have to pay to entice the producer?

11 A. He typically does.

12 Q. That producer in the example I had, for
13 example, in northern Michigan?

14 A. Well, I guess I would argue that the
15 buyer -- from what I know of the pricing
16 structure in the MEMMA pool, that is where the
17 deficit market is. They do have a higher
18 premium structure for both -- for all classes of
19 milk, typically in the fall, short period,
20 versus the spring surplus period, they do pay a
21 higher over order premium level on all of their
22 milk regardless of how much transportation cost
23 is related to it. And that higher premium level
24 is arrived at by an estimate of the marketing
25 people within the MEMMA agency as to what their

1 procurement costs are going to be in order to
2 satisfy the Class I market.

3 MR. TOSI: Okay. I have no
4 other questions. I appreciate your patience.

5 THE WITNESS: Uh-huh.

6 JUDGE DAVENPORT: Other cross for
7 this witness? It's almost 5:00. It looks like
8 it might be a good place to recess for today.
9 What's your pleasure again for tomorrow, 8:30?

10 MR. BESHORE: 8:30.

11 JUDGE DAVENPORT: We're in recess
12 until 8:30.

13 (Thereupon, the proceedings were
14 adjourned at 4:49 o'clock p.m.)

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C E R T I F I C A T E

STATE OF OHIO,)
) SS:
SUMMIT COUNTY,)

I, Christina A. Arbogast, a Registered Professional Reporter and Notary Public within and for the State of Ohio, duly commissioned and qualified, do hereby certify that these proceedings were taken by me and reduced to Stenotypy, afterwards prepared and produced by means of Computer-Aided Transcription and that the foregoing is a true and correct transcription of the proceedings so taken as aforesaid.

I do further certify that these proceedings were taken at the time and place in the foregoing caption specified.

I do further certify that I am not a relative, employee of or attorney for any party or counsel, or otherwise financially interested in this action.

I do further certify that I am not, nor is the court reporting firm with which I am affiliated, under a contract as defined in Civil Rule 28(D).

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office at Akron, Ohio on this 21st day of March, 2005.

Christina A. Arbogast, RPR

My commission expires December 7, 2005.

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